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Ontario, Royal commission inquiry into labour disputes

Honourable

v. 43

June 1967



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

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HEARINGS HELD AT
TORONTO

VOL. NO.

43

DATE

June 1, 1967

Official Reporters

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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE:

The Honourable Ivan C. Rand,
Commissioner, at 123 Edward
Street, Toronto, Ontario, on
Thursday, June 1st, 1967.

E. Marshall Pollock

Counsel to the Commission

APPEARANCES:

R.F. Wilson, Chairman)	The Council of
)	
R.C. Pearce, Vice-Chairman)	Printing Industries
)	
E.C. Caldwell, General)	
Manager)	
)	
E.W. Ewert, Assistant)	
to General Manager)	
)	
G.H. Love, Past Chairman)	
)	
E.H. Nicholson, Past)	
Chairman)	
)	
S.Y. Cole, Past Chairman)	
)	
G.C. Clark, Governor)	
)	
W.Z. Estey, Q.C., Counsel)	

Nethercut & Young Limited, Official Reporters, 48 York
Street, Toronto, Ontario. Per: F.J. Nethercut.

1 Toronto, Ontario

2 Thursday, June 1st, 1967

3
4 ---At 10:00 a.m., the Hearing commenced.

5 MR. POLLOCK: The Council of Printing
6 Industries, R.C. Pearce, Chairman, E.C. Caldwell,
7 General Manager, W.Z. Estey, Counsel.

8 Gentlemen, we have had a brief opportunity
9 of perusing your submission. We received it only the
10 other day. I can tell you, for your own edification
11 the proceedings of this Commission are extremely
12 informal. I see a formidable array of people here
13 today at the table and anybody who has anything to
14 contribute is certainly free to do so. The manner
15 of presentation of your submission is up to yourselves.
16 You can read part of it, you can read it all, you can
17 discuss matters, we can ask questions either before,
18 during or after you have made your presentation -
19 whatever suits your preference. All I ask is that
20 when you speak you only speak one at a time.

21 MR. ESTEY: Mr. Commissioner, the
22 first thing I should do is perhaps introduce the people
23 I have brought with me. The current Chairman of the
24 Council of Printing Industries is Mr. R.F. Wilson.
25 It changes from year to year by the democratic process
26 and we have last year's Chairman with us. The Vice-
27 Chairman is Mr. Pearce and the Secretary and General
28 Manager is Mr. E.C. Caldwell. We have, Mr. Commissioner,
29 Past Chairman, Mr. Love, another Past Chairman, Mr.
30 Sid Cole, another Past Chairman, Mr. Ed. Nicholson and

1 a member of the Board of Governors, Mr. Gavin Clark
2 and Mr. E.W. Ewert, who is Assistant to the
3 General Manager.

4 Now, Mr. Chairman, because of the name
5 of the organization, we have had our brief printed
6 so that you might be able to read it more readily
7 in a printed version, rather than a Xerox version,
8 which is filed.

9 MR. POLLOCK: One of the perquisites
10 of office, I suppose.

11 MR. ESTEY: Mr. Pollock, I apologize
12 for proposing to take you up on your suggesting that
13 we can do this any way we like. I think I might
14 save Mr. Commissioner a lot of time if we could pick
15 out the salient features of our brief. We have come
16 prepared, and I have got my experts with me to answer
17 any questions which you might like to ask either
18 during the presentation or at the end of our presenta-
19 tion.

20 First of all, Mr. Commissioner, may
21 I spend a moment to describe what the Council of
22 Printing Industries is. First of all, from the legal
23 viewpoint it is a corporation without share capital
24 incorporated under the Ontario Corporations Act, which
25 means it has no shareholders but it is a corporate
26 entity. Its organization by statute, must operate
27 without profit to its participants and it must operate
28 within the ambit of the powers and objects which we
29 have set out on page 1 of our brief.

30 THE COMMISSIONER: Who are its

1 participants?

2 MR. ESTEY: The participants in the
3 organization, Mr. Commissioner, are owners of printing
4 and graphic art establishments in Ontario, but sub-
5 stantially, in the municipality of Metropolitan Toronto.

6 THE COMMISSIONER: Are they corporate
7 members?

8 MR. ESTEY: They are corporate members
9 in the main. Some of them are partnership members
10 but they are largely corporate.

11 THE COMMISSIONER: They are not
12 individual persons?

13 MR. ESTEY: Not individual persons.
14 The way we get around that difficulty is we have two
15 kinds of membership. We have full members who are
16 corporate members, then we have power in each of
17 those members to nominate an associate member who is
18 a natural person and he is the office holder. Of
19 course, the corporation can't hold the office. It was
20 organized with a view to coordinating the whole field
21 of labour relations amongst the printing employers in
22 this Greater Metropolitan area. It was incorporated
23 some 10 years ago. Its principal object is that
24 which appears first in its object to represent employees
25 in the graphic arts industry in the Province of Ontario
26 in their negotiations, including contract negotiations
27 and labour relations in all its phases with the trade
28 unions representing labour employed by members of the
29 Corporation. The other powers which follow, amplify
30 and assist the corporation in achieving that first

1 objective and we say in explanation at the bottom of
2 that page that it wasⁱⁿ incorporated to coordinate labour
3 and management relations including the conduct of
4 negotiations with the trade unions representing employees
5 of the membership and with labour relations, sir, we
6 mean to embrace all phases from the certification
7 through negotiation, through conciliation negotiation,
8 contract drafting, arbitrations and renewals of contracts
9 and, of course, this kind of an organization cannot
10 operate only on the dry, bare bones of contract
11 negotiations; they publish informational bulletins
12 for their members and generally acquaint and educate
13 the members on what is going on in the labour movement
14 here and in the United States.

15 The membership of C.P.I. has become
16 rather large since it was incorporated. There are
17 now 115 employer members employing 11 thousand employees
18 in more than 100 plants in the Metropolitan area. In
19 fact we believe, and the statistics which are available
20 indicate, that the graphic arts is the largest employer
21 in the manufacturing field in the municipality of
22 Metropolitan Toronto.

23 THE COMMISSIONER: Just what is included
24 in that expression "graphic arts"?

25 MR. ESTEY: Well, sir, the field is
26 rather strange, but viewed from my somewhat outside
27 position, I break it down into easily understandable
28 sections. First of all, there is what we call
29 printing which might be letter press or lithography,
30 but it is putting images on paper. Then there is

1 typesetting, moving backwards from the presses, there
2 is typesetting, photoengraving or plate-making of one
3 process or another, book-binding and then other
4 phases or steps in the trade such as stereotyping and
5 electrotyping, artwork.

6 THE COMMISSIONER: It holds pretty
7 well within the conception indicated by the word
8 "graphic" - "grapho write," I suppose.

9 MR. ESTEY: Yes, it is everything
10 between the man who wrote manually and the printed
11 page.

12 MR. POLLOCK: You are within the
13 jurisdiction of Marshall McLuhan.

14 MR. ESTEY: I don't know, if he
15 communicates, it is not to us.

16 While we operate throughout Ontario it
17 really is not so, and we do not intend to be speaking
18 for more than the large region from Oshawa on the one
19 side, over to Burlington or Hamilton on the other and
20 north to the rock area, but largely the municipality
21 of Metropolitan Toronto.

22 At one time we embraced the three daily
23 newspapers here but they are not members now and we do
24 not bargain for them and have nothing other than
25 informal contact with them. We have no relationship
26 there. They operate so differently in this printing
27 business that the community of interest was pretty thin
28 between the two and they have their own group and we
29 have ours.

30 The other distinction, which I should

1 point out before we leave this preliminary region, is
2 that the lithographers have their own organization and,
3 as you well know, a lithographer is a specialized type
4 of printer who uses an offset process and he embraces
5 plate-making because they use plates peculiar to their
6 own process. They have their own association but there
7 is a considerable overlapping. We have some members
8 who are lithographers.

9 And, may I say, at the outset - perhaps
10 before that, I should go on to say this briefly of
11 our organization, that C.P.I. does not carry on any
12 other function than labour relations. It is not a
13 trade association, it is not a convention holding
14 organization that represents the group in tax matters
15 and other things. It is wholly and solely labour
16 relations. It operates through a permanent staff
17 headed by Mr. Caldwell, the General Manager, and he has
18 Mr. Ewert assisting him and they have a staff here in
19 Toronto. The staff does the negotiating for the group
20 organized as a Board of Directors which we call the
21 Board of Governors, the bylaws provide for the mechanics
22 for signing on behalf of all the members. The members
23 are bound, once the association signs in their name
24 but the actual day-to-day front-line operation and
25 negotiations are carried on by the paid professional
26 staff.

27 May I say, before I go into the detailed
28 parts of our submission, that we enjoy, fortunately,
29 excellent relations with the trade unions. There has
30 been no strike against a member of the association, the

1 company, since it was formed over 10 years ago. The
2 printing industry has seen strikes in this area. One
3 of the reasons for the organization of this company
4 was the fact that labour relations required stabiliza-
5 tion and we like to think that one of the big factors
6 in the stabilization of labour relations in this
7 industry, in this large industry in Toronto, has been
8 the advent of C.P.I. The trade unions seem to look
9 on it as a facility which aids them in negotiating
10 with all the employers at one time so that there is
11 not the hostility, which some people might think would
12 be attendant upon a focusing of the effort by
13 industry to bargain through a single instrument. There
14 does not seem to be that problem. In fact, the
15 reverse has been our experience.

16 The members, 98 per cent of the members,
17 employ union workers. We have some non-union workers.
18 They are a very small factor. We have some members
19 whose plant is not wholly represented by trade unions:
20 We have a mixed group. Our employees are represented
21 predominantly by the international unions and I have
22 listed them on page 2 and 3, but I can tick them off,
23 perhaps, and describe them - The International Typo-
24 graphical Union is the grandfather union from which
25 the others have sprung and they represent the people
26 who set the type. There is the Printing Pressmen's
27 Assistants Union who operate the letter presses. Some
28 lithographic presses, but historically the letter
29 presses. Then there is the Bookbinders' International,
30 which speaks for itself, the stereotypers and electro-

1 typers. Mr. Commissioner will be aware that that trade
2 union may be representing a fast disappearing constitu-
3 ency. The lithographers and photo engravers, on the
4 other hand, is a very modern union, having just combined
5 the lithographers on the one hand and the photo engravers
6 on the other and that is the Plate-Making Union.

7 Now, all of these are international
8 unions. The head office, of course, is outside of
9 Canada. Our membership also employs workmen who
10 have come from other unions, principally the Canadian
11 Union of Operating Engineers which is not an international
12 union, the Toronto Newspaper Printing Pressmen's Union
13 and the Toronto Mailers' Union. Now, the Mailers'
14 Union is really part of the I.T.U. but they have a
15 semi-autonomous local representing the mailers and
16 they are largely in the newspapers but there are some
17 in our employ.

18 MR. POLLOCK: Is that what? Local 5?

19 MR. ESTEY: I think that is right,
20 Local 5.

21 Now, sir, may I turn to some of the
22 specific items of interest to us. The first item
23 which we would like to discuss is the conciliation
24 process. As this Commission has been told many time,
25 conciliation in Ontario is a statutory operation
26 available when private negotiations look as though
27 they are not going to be successful. We have no
28 attack, of course, on the institution of conciliation:
29 We think it is here to stay but we would like to see
30 some adjustments made to it. First of all, we find it

1 essential for reasons I will come back to, but on
2 principle we find it essential that the conciliation
3 process go forward with a negotiating committee on the
4 one side, which represents the actual employer, not
5 someone on his behalf, and on the other side, that the
6 negotiating committee represent and include employees
7 in the bargaining unit for whom negotiating is going on.
8 May I illustrate that? We operate a large number of
9 plants in which the tradesmen are employed not to
10 produce something like a newspaper but to produce a
11 large flow of isolated orders, not unlike a law practice
12 with a great clientele of people with small products
13 which we are producing for them. In contrast to that
14 you have the same type of craftsmen producing a newspaper
15 on a daily repetitive routine schedule with time
16 elements and a certain, if I may use the expression,
17 lower grade output. The product is a lower grade,
18 high speed product. When we come to negotiate, we have
19 found in the past that some of the trade unions will
20 have a negotiating committee made up predominantly
21 and on occasion, entirely, of people from the newspaper
22 field who have no feeling for what is going on in the
23 commercial plants. We find that that has two serious
24 disadvantages. One of them is that they bargain for
25 things which are not really of concern to their employees
26 but which may cause a strike and, secondly, and perhaps
27 more importantly, they do not bring to the bargaining
28 table, any continuity from the bargaining of the past
29 or the demands and rejections of the past or the studies
30 and mutual rejection in bygone days. It is a

1 heterogeneous operation with one year's team being
2 here today and gone tomorrow and next year a new team
3 and so on, and we find there is no continuity and no
4 stability in those relations.

5 It was not always this way. The Ontario
6 Act, prior to 1960, as this Commission has no doubt
7 heard, required in section 13 that there be representa-
8 tives of the bargaining unit from the employees and
9 then it went on to spell out the combinations of trade
10 associations such as us on the one side and groups of
11 unions on the other. But whatever the composition of
12 the two parties, both sides have had to have people
13 from the employers and employees who were actually
14 going to be affected by the contract.

15 The second element of conciliation --

16 THE COMMISSIONER: Would that involve
17 an employee from every member of your organization?

18 MR. ESTEY: No, My Lord, it consists
19 of employees of one or more members, was the way it
20 was worded - one or more. We found that to be satis-
21 factory because all of the members employed the same
22 type of union employee.

23 THE COMMISSIONER: Sufficient
24 similarity that one could represent all.

25 MR. ESTEY: That is right.

26 MR. POLLOCK: Can you give any
27 illustrations of the type of things that are bargained
28 for by this negotiating committee which are of no
29 concern to the particular employees?

30 MR. ESTEY: Yes - peculiar shifts and

1 peculiar pay perquisites for the off-shifts. For
2 example, one of the daily newspapers has three shifts
3 which overlap. They don't cover the 24 hours, they
4 concentrate on the late afternoon and that overlap
5 shift is regarded as a penalty and so there is great
6 stress made in rewarding that worker over and above
7 others. Once you get that high scale of pay it is
8 impossible to explain it away by saying, "Well, that
9 was the reward for something that doesn't happen in
10 our plant". They then want to take what they call
11 the lobster shift, for reasons I don't know, that is
12 taken out of context and put into our negotiations as
13 being some kind of a norm at which we should aim. It
14 just is not so. There are all kinds of work practices
15 in the newspaper plant, particularly in connection
16 with typesetting, for instance the ability of the
17 trade union to not supply just a work force which the
18 employer then organizes to his own desire. The trade
19 union's concept in a newspaper office is that each
20 chair, if this was a linotype set-up, each chair is
21 called a situation and the trade union has the view
22 in the newspaper world that all their responsibility
23 is that every morning at the beginning of the shift
24 there be one body sitting on each chair. It won't be
25 the same body every day. They have their own system
26 of relief which is organized inside the union. It is
27 this manning concept of the newspaper which is wholly
28 foreign to the commercial trade and Mr. Commissioner
29 will appreciate in a moment that this is not applicable
30 to the commercial field because, firstly the skills are

1 a little more advanced, the product is a finer product
2 than the high-speed newspaper that we read today, full
3 of errors and paragraphs out of place and everything
4 else. You can't deliver a railway timetable in the
5 same state that we see the financial pages and this
6 result happens if you have a rotating, unpredictable
7 work force.

8 THE COMMISSIONER: Hasn't that fact
9 been emphasized in the course of negotiations?

10 MR. ESTEY: Yes, and we, to a large
11 extent have been able to defend our position but we
12 think it is a needless battle because if our own men
13 were on the other side of the table, they would never
14 raise it. They appreciate this. A man who has spent
15 all his life in a newspaper typesetting office doesn't
16 appreciate the difference and, of course, it is not
17 easy to tell a man that he does work that is somewhat
18 less refined than someone else's.

19 MR. POLLOCK: Of course, the control
20 that the printers have now in the Toronto newspapers
21 has slightly diminished from its zenith.

22 MR. ESTEY: Yes.

23 MR. POLLOCK: So you may not, in the
24 future, be coming into those difficulties.

25 MR. ESTEY: It may not affect us in
26 that way, but I am sure it will come back and I am
27 sure that the newspapers will be organized and their
28 position will always be different than ours.

29 Why that was repealed, I have been
30 unable to ascertain. It was put through with a great

1 number of amendments. There is no committee report that
2 I have been able to read as to why that section was
3 revised. It must have been asked by somebody. I can
4 guarantee it was not sought by us and we did not get
5 any notice of that amendment. It came out in the
6 Queen's Press as one of the facts of life and we urge
7 this Commission to recommend that it be reinstated.

8 I should say, before we leave that, that
9 the old section still allowed the trade union to call
10 in an international representative or more, if it wanted
11 that technical advice. We are not seeking to get
12 amateurs across the table from professionals; we want
13 local knowledge instead of remoteness.

14 THE COMMISSIONER: Generally speaking,
15 how many representatives are there in these negotiating
16 groups?

17 MR. ESTEY: I would say from 3 to a
18 dozen. They vary with the nature of the trade because
19 some trades have many segments and each segment politi-
20 cally likes to have its voice and should have, so they
21 vary.

22 THE COMMISSIONER: There is no particular
23 limit?

24 MR. ESTEY: None whatever, only when
25 we get down to arbitration do we have a limit. In the
26 contract there is no limit.

27 Then, something of less importance as
28 compared to what I have been discussing, but it is
29 significant, and that is the problem which is very old
30 in Canada in labour relations and, indeed, in management.

1 and that is the question of international intervention
2 and I am dealing with the top of page 5 in our mimeo-
3 graphed brief, sir, international intervention in what
4 is essentially a local bargaining process. Now this
5 is a very sensitive point. May I say, at the outset,
6 that all of our membership are domestically owned so
7 that we are able to say that management is not subject
8 to international influence. Now, I know that it is
9 equally arguable in many industries to say that while
10 a trade union is subject to international influence,
11 so is the company. In our field we are not in that
12 category, fortunately, or unfortunately, depending on
13 your views of things, but it has a serious difficulty
14 in labour relations and perhaps it is insoluble and
15 it occurred very recently; Mr. Pollock has mentioned
16 the newspaper strike. It is common knowledge that
17 one of the great impedimenta in the newspaper settle-
18 ment was the fact that the headquarters of the union
19 in question was in Colorado Springs and that they had
20 at that time a policy question which they wanted
21 settled somewhere and for some reason it was found
22 convenient to settle it up here. I suppose if one
23 looked closely into it you might find that the
24 national labour relations code in the United States
25 prevented the contest down there or maybe some aspect
26 of the restraint of trade laws prevented the contest
27 down there but in any event it was staged here. In
28 our respectful view, this does not assist the Canadian
29 community. It may assist the labour movement
30 internationally but that is not what our bargaining

1 process is for. We must be intellectually honest here.
2 We have not been seriously, adversely affected by this
3 intervention but it has affected the stability of the
4 unit with which we are bargaining because there has
5 been a political confrontation inside the trade union
6 in at least one instance where the people bargaining
7 with us wanted one thing but their instructions were
8 to get something else and this tension on the other
9 side affects us. It is a problem to which we bring
10 no solution. If one outlaws the international inter-
11 ference in bargaining on the union side, it would seem
12 equitable to do the same on management's side and there
13 doesn't seem to be an early solution to that one on
14 either side.

15 THE COMMISSIONER: It is an extremely
16 important question and it is pretty hard to say just
17 what could be done because the oldest labour organizations
18 in this country really are international. Take the
19 older railway organizations and it would certainly be
20 a wrench to have them withdraw.

21 MR. ESTEY: And in some instances it
22 may not be economically wise that they should because,
23 for many years, I would take it the trade union
24 movement in Canada could not have gone ahead on its
25 own steam.

26 THE COMMISSIONER: That is true, I think
27 that is so in the case of the mining unions. There
28 is no doubt they received a great deal of help during
29 strikes which was beneficial to them. Whether it was
30 ultimately beneficial may be another question.

1 MR. ESTEY: Well, they would receive
2 other assistance too such as economic studies and
3 staff people which they couldn't afford to have,
4 people who would bring expertise to contract negotia-
5 tions. We are not trying to turn the dial back and
6 unbalance the scale. What we are suggesting, sir,
7 is that if the conciliation process is essentially
8 local in nature by statute, we think this problem will
9 recede in importance and, secondly, we think this
10 problem is one which is locked up in the larger
11 economic fate of the country and this will be solved
12 as we solve the larger question of domestic control
13 of certain special industries. So we do no more here
14 than point out that it is a factor and it is one which
15 we believe supports our request that the conciliation
16 team by statute be local in nature.

17 MR. POLLOCK: It is not the fact that
18 the international office is located in Colorado Springs
19 or in the United States, it could be located in
20 Winnipeg for that matter?

21 MR. ESTEY: It could be, yes.

22 MR. POLLOCK: It is a question that
23 the contract bureau is deciding something other than
24 what the independent individual local who is particu-
25 larly negotiating this contract decides. They have
26 to refer this to them for their opinion. We have
27 heard from, I think, all sides of the recent Toronto
28 newspaper strike except the newspapers and they don't
29 have to say anything now.

30 MR. ESTEY: Except their editorial page.

1 MR. POLLOCK: That is right. But the
2 position of the I.T.U. in this matter is that they
3 keep their experts at the contract bureau in Colorado
4 Springs, or wherever it happens to be, to provide
5 service and the local would send this contract to
6 them and they would go over it with a magnifying glass
7 and a fine-toothed comb and find the difficulties.
8 Of course there are, as you suggest, certain policy
9 considerations that would affect the whole of the
10 union structure. That is the type of thing they may
11 be more concerned with there than the individual fellow
12 here who may be given enough money to compensate him
13 for the loss of this traditional jurisdiction, but it is
14 thin end of the wedge. Just on this point of decision-
15 making outside, your objection would still apply if
16 assistance came from Vancouver or from Winnipeg or
17 anyplace outside the local area.

18 THE COMMISSIONER: It is not a geographic
19 type but I don't think there is much doubt that in
20 certain instances it is the American dominated interest
21 to try out the issue in Canada rather than have it
22 done first in the United States. That was done in
23 the firemen's case in the railway.

24 MR. ESTEY: We have suffered that here
25 in a much smaller and less dramatic way in the use of
26 certain cameras for typesetting. Now that sounds
27 odd, but you can modify type with a camera and engrave
28 the result and you have some new type without a
29 man ever touching it and so the trade unions again
30 selected Canada and selected as a battlefield, one of

1 our members. The international brass came up from the
2 States for both competing unions and this battle was
3 fought out here at our expense so that the United
4 States' contracts could be reflected. That is a
5 disadvantage. Let us be fair. On the other side of
6 the coin, the international union represents a
7 stabilizing influence which we occasionally resort
8 to. Occasionally, by reason of an election here,
9 somebody will get into office in a large local affecting
10 a number of plants, who will have some bug in his
11 bonnet that he wants a particular perquisite built
12 into the contract, one which is against the interests
13 of efficiency, not necessarily a monetary item. Now,
14 that kind of thing sometimes is resolved by the
15 international.

16 Then there is a third side to this
17 coin and that is that the international in some cases,
18 and perhaps it is declining, but in some cases by
19 their constitution, has the power of veto of a contract
20 approval by a Canadian local. This is the kind of
21 thing that we hear and this perhaps is the place where
22 there could be some legislative action to say that
23 such constitutions are not applicable to negotiations
24 in this country.

25 THE COMMISSIONER: Didn't that fact
26 appear in the typographical dispute?

27 MR. ESTEY: Yes, that is what happened,
28 it was an ultimate veto which caused the strike.

29 MR. POLLOCK: Is it significantly a
30 difference in a semantic way to say they haven't got a

1 veto, that you can do whatever you want because this
2 is what they say " You are autonomous. If you want to
3 approve that contract, fine, if you don't want to
4 approve a contract which we think you ought to approve
5 and you want to go on strike, well you are not going
6 to get any strike benefits from us." They are holding
7 the purse.

8 MR. ESTEY: That is, of course, a
9 tactic which is by no means limited to the union
10 movement but that is how it is done in part.

11 Now, in this question of conciliations,
12 we have one or two other items which one has to
13 reflect on to see why they are connected to conciliation
14 and I refer firstly to the practice of having the
15 foreman included in the bargaining unit. I have this
16 on page 5 of the brief. I can summarize it, however,
17 more quickly. Because of the history which Mr.
18 Commissioner has referred to, we have inherited a
19 great deal of typographical and graphic art labour
20 history from the United States, very little from
21 England, but a great deal from the United States.
22 Coming out of that history has been a practice in
23 the old I.T.U. to include foremen in the bargaining
24 unit. This probably was all right back in the days,
25 away back when the foreman would perhaps be the most
26 literate man and the best spokesman they could have
27 in negotiations and he became the chairman, as they
28 call it, in a kind of a lodge movement but it no longer
29 fits because the foreman now is the manifestation
30 of management in the plant and to have him come into

1 the bargaining process is an embarrassment to him,
2 an embarrassment to the people with him and to
3 management.

4 Some trade unions have no machinery
5 in their constitution whereby a man can voluntarily
6 withdraw and get an honourable discharge when he
7 rejoins management so he doesn't want to be put out
8 and have the stigma of that attached to him so he
9 stays in the trade union. The constitution of the
10 trade union, naturally, has a lot of strictures in
11 it about things being done which are hostile to the
12 union and so the man is in an invidious position
13 being a spokesman for management and advisor to
14 management at the very lowest, spokesman at the highest,
15 but at the same time having these historical loyalties
16 to his lodge or trade union. We feel very strongly
17 on this that the statute should prohibit the inclusion
18 in a bargaining unit of a foreman.

19 THE COMMISSIONER: How do they do it
20 in the railway organizations because every year we
21 find a promotion of some sort of that nature?

22 MR. ESTEY: I don't know whether the
23 brotherhoods have a way of releasing the man or not.
24 I suspect they do not have, though, because occasionally
25 when some executive retires it is said that he still
26 holds his union card. I remember one of the presidents
27 of the C.N.R. retiring and being proud of the fact
28 that he still held one of the brotherhood cards. I
29 don't know where the breaking line is either between
30 the bargaining unit and the management unit but in our

1 plant you have a little bit of a problem of where
2 the breaking line is because you have working foremen
3 and non-working foremen. The non-working is clearly
4 a superintendent of some kind and he should be out.
5 I would think that there are occasions where a working
6 foreman is really a grandiose lead hand and that he
7 should be in but that could be left to the ordinary
8 processes of negotiation.

9 THE COMMISSIONER: Management could
10 limit his actions on behalf of management.

11 MR. ESTEY: Yes, management could
12 then decide which way he went anyway.

13 MR. POLLOCK: These foremen don't take
14 any part in the actual operation of the internal
15 affairs of the union, do they, once they become
16 foremen?

17 MR. ESTEY: I think that varies with
18 the unions. I can't say directly. I have acted
19 for one of these unions on occasion. I think that
20 they do, in one or two of those unions, carry on in
21 the political life of the union. Perhaps one of the
22 people here has direct knowledge of that.

23 MR. COLE: In one case a foreman
24 is just as active in a union as he was prior to becoming
25 a foreman.

26 MR. POLLOCK: He exercises his duties
27 inconsistent with his supervising position?

28 MR. COLE: Yes, he is required sometimes
29 to desert his place of employment to go on a march
30 which they sometimes call it. This is very inconsistent

1 with the man's responsibility to the firm because he
2 actually is representing management in the plant and
3 he is on the horns of a dilemma, so to speak. Which
4 way does he go? Of course, it has caused a great
5 deal of embarrassment to these people sometimes because
6 really, their responsibility and their interest lies
7 with management.

8 MR. POLLOCK: Of course, though, they
9 have in some cases, a significant investment in the
10 security and pension benefits of the union and also
11 if they do lose this supervisory function with a
12 particular employer and ever want to return to their
13 trade, they have to have membership in good standing,
14 I suppose.

15 MR. COLE: Of course, that is the
16 reason for being able to obtain an honourable discharge,
17 that you can ultimately come back if you so desire.

18 MR. POLLOCK: I suppose that the
19 provision that says in this Labour Relations Act that
20 everyone is free to join the trade union of his choice,
21 I suppose if these men could join and when they became
22 foreman, become dormant, so to speak, so they would not
23 lose any of the contributions they had made and would
24 not participate in functions that would be inconsistent
25 with the managerial function then your objection would
26 be dissipated.

27 MR. ESTEY: The only problem you have
28 there, I will come to it later, is this pension.
29 But perhaps we should deal with that when we come to
30 pensions.

1 THE COMMISSIONER: Haven't some of
2 the provinces a prohibition against anyone such as
3 a foreman?

4 MR. ESTEY: Yes.

5 THE COMMISSIONER: I remember British
6 Columbia and possibly Manitoba.

7 MR. ESTEY: We have the same on
8 confidential personnel but the foreman has never been
9 held as being a man with confidential information.

10 MR. POLLOCK: Well, he exercises
11 managerial functions.

12 MR. ESTEY: That is correct, but the
13 trade union has a constitution which says you must
14 have him in the unit and we have to bargain with that
15 union and we can't make a contract with them unless we
16 put him in the union.

17 MR. POLLOCK: I think that if you were
18 starting fresh and went to get certification you would
19 have no difficulty carving out the format.

20 MR. ESTEY: We would have no difficulty,
21 that is right, but I would think the bulk of our
22 membership have inherited these unions from before
23 the days the Labour Relations Act was on the books.

24 THE COMMISSIONER: Then I understand
25 that the Board has actually certified a union which
26 professedly included a foreman.

27 MR. ESTEY: They will certify a union
28 whose constitution professes to represent foremen but
29 they will not - I think Mr. Pollock's point is correct
30 that the certificate issued now by the Labour Relations

1 Board says persons below the rank of foremen. They
2 will not certify now a unit with a foreman in it but
3 they will allow a trade union to file its constitution
4 which says that they must represent the foreman and
5 there is nothing to stop the trade union by any kind
6 of withholding of services to ultimately thrust its
7 will on you despite the fact their certificate says
8 it does not include the foreman. This is the nature
9 of the beast.

10 May I just illustrate that. Some of our
11 membership do contract work which is seasonal and
12 which must be done. I don't like the possibility of
13 it getting into the newspapers to illustrate it further
14 than that, but it must be done so that we do not have
15 the complete latitude of bargaining to say " We just
16 won't have that man in the union and we won't sign the
17 contract" It is the lesser of evils to lose a
18 tremendous printing contract and if it is lost it won't
19 go elsewhere in Ontario, it will go to the United States
20 and then you will never get it back. So a lot of
21 these practices are thrust on us by strong bargaining
22 positions and we would like the protection of the
23 statute as we have in many places, section 34, for
24 example, that says no matter what you bargain you must
25 have an arbitration clause. That is the kind of thing
26 we are looking for in this instance about the foreman.

27 THE COMMISSIONER: You can't have him
28 in the union.

29 MR. ESTEY: You can't have him in.

30 MR. POLLOCK: Of course, if they insist

1 on that as a bargaining position, a position that is
2 contrary to their certificate and contrary to the
3 policy of the Labour Relations Act, that is probably
4 not bargaining in good faith.

5 MR. ESTEY: That is right.

6 MR. POLLOCK: All these remedies are
7 meaningless to you people anyway because you need these
8 people to run your business.

9 MR. ESTEY: That is correct.

10 MR. POLLOCK: So that whatever you
11 put in the Labour Relations Act it is all negotiable.

12 MR. ESTEY: There are a number of items
13 where, when you come right up to it, you don't want
14 to exercise your remedy because it doesn't augur for
15 good labour relations the next time round so we draw
16 back, and I will come to one of those in a moment.

17 Another item of the same kind of thing
18 but not as important to us, is this question of union
19 shop. In our trade the greatest single factor today
20 on both sides of the table is the scarcity of the
21 skilled tradesman. He is in short supply, the demand
22 is greater than the supply. The union shop is an
23 anachronism in many cases in our plants. The union
24 can't supply enough men and we then have to find them
25 and put them in the union. They move their men around
26 to try and fill up the holes but there just aren't
27 enough skilled men in many trades. Nevertheless, it is
28 the policy of the international union's head office
29 to always have and to veto a contract which does not
30 have a union shop clause. So again you have this

1 question of the work force being content to sign a
2 monetarily satisfactory contract but the organization,
3 not wanting to sign it because it does not have the
4 union shop clause.

5 MR. POLLOCK: Union or closed shop?

6 MR. ESTEY: Union. Those terms mean
7 all things to all people but by "union" we mean that
8 everybody must, within a certain number of days, sign
9 up with the union and if they won't we must discharge
10 them. We can hire anybody.

11 THE COMMISSIONER: The choice lies with
12 you and is not dictated initially?

13 MR. ESTEY: Initially it is not. If
14 they have people to supply, we take their supply. If
15 they do not have, we are free to go outside. We have
16 not had a case that I am aware of where the union
17 has failed to admit a man to membership. I don't think
18 they would go that far.

19 Now, the question of pensions I would
20 like merely to tick-off here because I am going to
21 come back to it. I stand corrected on one small
22 part in answer to Mr. Pollock's question and I think
23 I should set the record straight. What I said was
24 generally true but we have to take into account the
25 newspaper strike and since that time we must take
26 the people out of this other trade which is really
27 not qualified in our view - it may be egotistical, but
28 the historical view that you have to have a better
29 training in the commercial field, and we have to take
30 these people because it is union shop. Now, the people

1 in our shops do not, in our experience, really bargain
2 for that inclusion in the contract. That is a
3 dictate of the international which brings me back to
4 a point we have covered. This is the kind of thing
5 which leads to artificial bargaining. The real issue
6 is not really battled out between the parties, the real
7 issue is whether or not the international would veto
8 a contract which did not have the union shop clause.
9 Now they will. I know of none of our contracts which
10 do not have the union shop clause.

11 MR. POLLOCK: But you don't have to
12 take these people that they refer to you, do you?
13 You can find somebody who is satisfactory to you?

14 MR. ESTEY: I think not, if they are in
15 the union and ours are outside, we have to take theirs
16 until the supply runs out. You can reject a man as
17 being unqualified but you have to keep him a number of
18 days and you have to arbitrate if they disagree with
19 you.

20 MR. POLLOCK: It is closer to a closed
21 shop.

22 MR. ESTEY: In the shadow of a newspaper
23 strike it is closer to the closed shop.

24 THE COMMISSIONER: The difference
25 certainly in 1946 was that in a closed shop you took
26 the man that was offered to you. In the union shop
27 you selected him but he had afterwards to join the union.

28 MR. ESTEY: That, theoretically, sir,
29 is what we have but if you reject the man you have to
30 get him a fair trial as determined by some of the

1 contracts and then they can arbitrate that issue.

2 THE COMMISSIONER: But you have
3 introduced an element of the closed shop.

4 MR. ESTEY: Yes, that is in essence
5 what it is.

6 On this question of pensions, the problem
7 is many faceted but the essence of the problem is that
8 some of the trade unions operate their own pension and
9 of course, the operation of the pension is outside of
10 Canada. The union is greatly assisted in this by
11 the Ontario Pension Benefits Act which excepts from
12 the requirements of the statute a trade union operated
13 pension plan. There have been two instances where
14 this has had a real impact in our industry in Toronto.
15 The one which is very well known where the pension
16 plan became insolvent and they recognized no claims
17 on retirement whatever and so the Canadian contributions
18 from us and from our employees are gone.

19 Then you have the other incident which
20 is very recent, where the trade union, an international,
21 has used the pension fund, the accumulations, to finance
22 other union activities, principally strike benefit
23 payments and they borrow and there is a note to show
24 it in the financial statement as a note owing from the
25 strike fund to the pension fund and, as a result of
26 the Toronto newspaper strike, the pensioners here are
27 receiving less now from that fund than they received
28 monthly prior to the strike, and it is administered
29 outside the country and the man has no remedy
30 whatever.

1 MR. POLLOCK: Well, he has a remedy
2 within the structure of his union, I suppose.

3 MR. ESTEY: Which is from his viewpoint
4 nil. There is no judicial arena to which he can go.

5 THE COMMISSIONER: Has that question
6 really been raised among the other international unions
7 who have their locals in this country? To me it is
8 a very serious question but I was just wondering how
9 Canadian labour had reacted to it.

10 MR. ESTEY: It has been raised, to my
11 knowledge, outside of this Association in the Teamsters
12 where they operate their own pension fund and some
13 Canadian locals have absolutely refused to insist
14 that the employer in the contract contribute to it
15 because they are not sure they are going to get that
16 money. That has come up and it has come up in
17 insurance funds the same way. It is a great embarrass-
18 ment to the Canadian union member who wants to be a
19 loyal member of the trade union movement to bargain
20 for a contribution to a fund in which he has no faith
21 and it is an anomaly that our pension legislation
22 will require the large pension institutions, inter-
23 nationals such as Prudential of America. and Metropoli-
24 tan of New York, to conform to our pension legislation
25 but they don't require the international trade unions
26 to conform. It is inconsistent.

27 THE COMMISSIONER: What does conformity
28 involve?

29 MR. ESTEY: The retention of the moneys
30 in Canada, accounting, inspection, a certain floor, a

1 step rate of retirement rates, a certain fixed interest
2 rate and more importantly, a reporting to membership
3 annually or more frequently as they may require, as to
4 what the status of the fund is.

5 MR. POLLOCK: I suppose the attitude
6 of the individual members in Canada, those who have
7 given any consideration to it, is that they make up
8 on the peas what they lose on the beans. I suppose
9 if this were a great issue to them, this insecurity
10 of pension funds, they would maybe take steps to
11 withdraw themselves from the organization, but they
12 probably achieve greater benefits from belonging to the
13 organization.

14 MR. ESTEY: That is right, the security
15 of their present position against the uncertainties
16 of the future are just not in balance.

17 THE COMMISSIONER: Just what is the
18 relation between the Dominion pension scheme and the
19 private international schemes?

20 MR. ESTEY: The Canada Pension Plan, sir?

21 THE COMMISSIONER: Yes.

22 MR. ESTEY: The Canada Pension Plan
23 is mutually contributed^{to} by employees and employers and
24 it is funded, of course, in Canada and remains in
25 Canada and it is a statutory right.

26 THE COMMISSIONER: Is it entirely
27 distinct from anything else?

28 MR. ESTEY: Entirely distinct.

29 MR. POLLOCK: Are they integrated or
30 stacked?

1 MR. ESTEY: One of everything. I am
2 going to come back to that question of pensions but
3 we think again that this is a matter which could be
4 cured by legislation for the good of the community and
5 the relief of a great embarrassment to the working
6 member. A trade union member does not think lightly
7 of pulling out of a fraternal organization that he was
8 almost born into and he will not leave it just because
9 there is a fear that his pension plan is going to go
10 sour. He will try a number of things before he will
11 do that. One thing is he will try and negotiate for
12 a collateral employer's plan so that he has got two
13 eggs in the basket. If one goes down the drain he
14 still has the other one.

15 Now, from our viewpoint, this is the
16 reason we feel strongly about it - we are not here as
17 a humanitarian movement to speak for the trade union
18 workers. What happens is that a man retires after
19 25 or 45 year's service and the employer knows him,
20 he probably came up through the ranks with him, he
21 knows his family and the man has got no pension, so the
22 man comes to the company and says, "I want to work
23 beyond my time because I can't afford to retire", and
24 of course he can't work, he is slowed down or, alter-
25 natively, he says "I have put all this time in for the
26 company, you people should look after me. You made
27 those contributions when you knew that plan was not
28 solvent". All these are unanswerable.

29 THE COMMISSIONER: Well, they pay only
30 on his instructions, don't they?

1 MR. ESTEY: They pay on his instructions
2 through the collective agreement but not by direction.

3 MR. POLLOCK: Of course, the union man
4 is the first one to chop off the hand if you are going
5 to put your hand on their international union affairs.

6 MR. ESTEY: That is right.

7 THE COMMISSIONER: What, specifically,
8 do you think can be done in this province?

9 MR. ESTEY: Our recommendation, sir,
10 is that the Ontario Pensions Act exclusion should be
11 withdrawn and that these pension plans should be brought
12 under the Act and sited in Canada.

13 THE COMMISSIONER: Do you mean have
14 a local provincial regulation of some sort?

15 MR. ESTEY: Yes.

16 THE COMMISSIONER: What could it be?

17 MR. ESTEY: Well, very simple, that
18 these pension plans would be forced to conform to the
19 Pensions Act of Ontario and if they don't conform,
20 nobody may contribute to them.

21 THE COMMISSIONER: Then you would
22 prohibit the contribution?

23 MR. ESTEY: Yes, I would just move them
24 over to the Pension Benefits Act. It is sub-section
25 (c) of, I think the definition section of the Pensions
26 Act, section 2 - I think it is 2(c) - should be repealed
27 in our respectful view.

28 If I may move on to the subject of
29 arbitration, I can be very brief with that. We view
30 with considerable favour, the present arbitration

1 procedures in the Ontario statute and we have nothing
2 but commendation for them. We do, however, view with
3 some alarm, this recent action which unhappily is beyond
4 the terms of reference of this Commission by the federal
5 government in withdrawing from the arbitration field
6 the County Court judges.

7 MR. POLLOCK: They have not really
8 withdrawn them, they have just said, "Your remuneration
9 will be nil".

10 THE COMMISSIONER: Isn't the result
11 that the province must, to some degree, furnish the
12 remuneration?

13 MR. ESTEY: The province is in a very
14 peculiar position. If the province pays a certain
15 specified sum which some of the provinces are doing,
16 then the judge must take on provincially assigned work
17 but here is the way it used to work: If we had an
18 arbitration of a contractual dispute, the two sides
19 would try and resolve it and failing that, we would
20 then sit down and try and pick a chairman. Under our
21 contracts here, which these gentlemen operate under,
22 you have two stages: You have an arbitration committee
23 and an arbitration board and there are two men from
24 each side sit on the committee. They try to resolve
25 the grievance. If they can't resolve it there, then they
26 appoint the chairman. If they fail to appoint the
27 chairman, then section 34 (2) of the Act takes over
28 and the province appoints the chairman. But almost
29 invariably, in fact in our experience for the last 11
30 years, invariably the committee appointed the chairman

1 and he was a County Court judge. Then each side
2 contributed to the cost of the chairman's fees and
3 expenses whatever the outcome. There was no sense
4 of costs being awarded against the loser.

5 Now, those chairmen became very know-
6 ledgeable about this field. There were 4 or 5 of these
7 provincial judges who could probably run a printing
8 plant and we could have in a morning session, a very
9 complex arbitration disposed of. Now, they are all
10 gone because, in fact, they won't sit, they can't
11 accept payment from us, they could accept payment from
12 the province and I suppose the province could include
13 them on a panel if they were to constitute an arbitration
14 panel on a rotating basis. The province could then
15 work out some basis to remunerate them but in this
16 world of realism, you don't get good arbitrators unless
17 they are paid for the trouble of listening to the case
18 and making a good award. We found it very satisfactory.

19 It could be said that this hole could
20 be filled by using professors and professional
21 arbitration chairmen and retired judges as we have.
22 A number of retired judges do hear these things but
23 the demand is very much greater than the supply of
24 that kind of chairman and, furthermore, without doing
25 violence to some of the sources that those other people
26 would come from, they don't have the experience that
27 you need to settle one of these industrial disputes.

28 MR. POLLOCK: You should get together
29 and raid the County Court, get these people to retire
30 and then buy them off and incorporate them permanently

1 into an arbitration system.

2 MR. ESTEY: That is what we would like
3 to propose, that the province constitute by whatever
4 device there is found proper and necessary, a permanent
5 panel of professional arbitration chairmen. The volume
6 of arbitration work is, to me, incredible. If you
7 look at the labour arbitration cases, they are almost
8 as big as the Ontario Reports and they just come out
9 in floods and they are so important now, as you know,
10 from the Polymer type award and the Port Arthur Ship-
11 building cases, that if you are in this labour game
12 it is as essential you read those cases as it is that
13 you read the Ontario Reports. We think that it is
14 very serious that there is no source now of permanent
15 professional chairmen for these boards. I am not
16 suggesting a permanent board. I don't think that would
17 work at all. I think our method of having a man from
18 each side and a chairman who is new to that particular
19 dispute, is essential. It has worked in the past.

20 THE COMMISSIONER: You would not have
21 a fixed board, a fixed man, who would sit as chairman,
22 but still you could have a fixed group.

23 MR. ESTEY: Yes.

24 MR. POLLOCK: If the demand is as high
25 as you say, then if you did appoint a fixed panel of,
26 say, 5 chairmen, they would be permanently involved
27 in that type of operation anyway.

28 MR. ESTEY: Yes, Mr. Pollock. You
29 would probably need more than 5. You see, these are
30 very short. Rarely do you have a two-day arbitration.

1 It happens very rarely. I would say most of them are
2 half a day but it is a very important half day. The
3 problem is heard quickly and, of course, the more
4 expertise brought to the table the quicker it is
5 disposed of. Some of the County Court judges met -
6 this is public knowledge - some of them utilized every
7 Friday and every Saturday and they would handle 3 or 4
8 arbitrations. Now, ten of them would cover, of course,
9 a tremendous flow of arbitrations. There are also
10 non-judges too. There are always some people who are
11 peculiarly adapted to a certain field of arbitration
12 and there are some law professors who will always be
13 available and good men to hear arbitrations. Sometimes
14 you even get the Deputy Chairmen of the Ontario Labour
15 Relations Board sitting. They are, of course, good
16 arbitration chairmen. There is some argument that
17 that creates in them a conflict of interests or an
18 unsatisfactory situation as to whether they really are
19 neutral, impartial chairmen down on Front Street when
20 they are refereeing these disputes.

21 THE COMMISSIONER: Does the membership
22 permit that?

23 MR. ESTEY: Yes, apparently it does.

24 MR. POLLOCK: They contribute all their
25 money to the consolidated revenue fund, I assume?

26 MR. ESTEY: I make no comment on that,
27 as to what they do. I know that we pay our share.

28 Then, on that last topic, we have
29 recommended, and I say it again in one sentence, that
30 a panel be established by the Province of Ontario so as

1 to provide professional chairmen for these boards.
2 Now, some suggestion has been made in some circles
3 that there is too much arbitration, that we don't need
4 this much, that a lot of it is manoeuvring for position
5 so that next spring when the contract comes open, you
6 will be able to bargain for a position. One of the
7 deterrents which you see suggested is that there be a
8 cost system initiated or the board be empowered to
9 award expenses against the loser. We do not favour
10 that. We think in an industry where there is too
11 much arbitration, that the seeds of that difficulty
12 can be traced back to too little negotiation. We are
13 not swamped in this industry with arbitration and we
14 do not think you need a deterrent in the statute in the
15 form of power to award costs or anything of that nature.
16 Furthermore, it makes arbitrations too realistic.

17 MR. POLLOCK: The only difficulty that
18 arises, if you take the contribution of costs away
19 from the party, as has been suggested by some groups,
20 and that the government bear the whole cost of the
21 arbitration procedure, then I think you have eliminated
22 a certain check on both the parties.

23 MR. ESTEY: Yes, that is a valid counter-
24 comment to any proposal that the thing be cost-free.
25 That is a mild form of cost right there, the automatic
26 loss of half of the costs.

27 THE COMMISSIONER: What amazes me is
28 the number of these that arise and you say they can
29 be got rid of in a couple of hours or something of that
30 sort. Why aren't they settled in the first instance?

1 Is it stupidity or obstinacy, or what?

2 MR. ESTEY: There is no doubt a per-
3 centage of them are the product of obstinacy but I
4 think one factor which you must always take into account
5 is that the local union and the shop organization of a
6 local union, if it is not a complete local of its own,
7 is democratically organized: It is politically oriented.
8 The chairman is elected. Now, that elected chairman
9 is not going to surpress a grievance on his own unless
10 it is outrageous. If a man feels he has been overlooked
11 in a promotion, the union executive, being democratically
12 elected, are going to put that forward and let the man
13 have his day in court and a great number of these
14 arbitrations are simply that. It is a chance to demand,
15 an opportunity to the man to get up and say, "I should
16 have had that lead-hand position" or "I should have been
17 compensated at such and such a rate for last Saturday
18 morning's overtime, instead of another rate". A
19 great number of the arbitrations are no more consequen-
20 tial than that.

21 However, there is another kind of
22 arbitration which we find extremely helpful and which
23 I have expanded upon in the brief and which I will
24 simply summarize now, and that is the contract
25 interpretation arbitration where there is a genuine
26 difference of opinion as to what it means. That helps
27 two ways. First of all, it keeps labour in harmony
28 to blow off the steam in arbitration with the continuance
29 of work and, secondly, it clears the air for the next
30 contract negotiation.

1 THE COMMISSIONER: I was wondering, I
2 suppose you do profit from the interpretation or
3 experience of one year in the next.

4 MR. ESTEY: Yes, no doubt.

5 THE COMMISSIONER: And yet you have
6 these long, elaborate agreements which take weeks and
7 sometimes months to agree to.

8 MR. ESTEY: Well, we, at the present
9 time -- to give you a practical example, at the present
10 time the Council of Printing Industries has only one
11 arbitration on the horizon, I think, just the one.
12 Now, with 11 thousand employees and just one arbitration,
13 that is not bad.

14 THE COMMISSIONER: That is getting it
15 down to what I should think one would expect after 10
16 years of experience. You go through more or less the
17 same field. Are there many new situations arising
18 that have never been thought of in the past?

19 MR. ESTEY: Yes, this comes up because
20 of the installation of new type of equipment and this
21 is a big factor in the graphic arts industry where you
22 have labour saving equipment. The question comes up
23 of how many men will man it, what is the machine, what
24 quality of a journeyman do you put on it and which
25 union will operate it? All these things are arbitrated.
26 There is a lot of that. Most of that is resolved by
27 Mr. Caldwell and his staff in the Council of Printing
28 Industries. But in other fields, for example the
29 electrical manufacturing field, there is just a
30 tremendous flow of arbitrations on this kind of thing.

1 MR. POLLOCK: Perhaps, would you say
2 as a generality that there are more arbitrations in
3 areas involving less skill than in areas involving
4 more skill, the frustration of the non-skilled repetitive
5 operation may breed more grievances and more complaints
6 and more irascibility?

7 MR. ESTEY: I don't think there is
8 any relationship between the presence or absence of
9 skill or the varying degree of skill and arbitration
10 but I think there is this in what you are saying, that
11 usually, in the more skilled operations, there is a
12 great segmentation of the skills into compartments
13 and classes of work and red circle rates and all manner
14 of awards for special skills. Obviously, the more
15 complicated your table of remuneration on the back of
16 the agreement is the greater the area for friction on
17 interpretation so I would think there is a relationship
18 there.

19 THE COMMISSIONER: Is this tendency
20 towards specialization getting down to smaller and
21 smaller units, really resulting in substantial differences?
22 I will tell you what I mean. I recall once on the
23 railway they were dealing with the question of
24 abandonment of lines and they would work out the traffic
25 returns and take in dozens of considerations and they
26 would bring it out to three or four decimal places of
27 cents whereas, a general formula would have given
28 the substance of it. A few cents one way or the other
29 doesn't make any difference. It may be that that
30 could not act in your situation but are these differences

1 that are achieved by such a refinement of differentia-
2 tion and subdivision and specialization, do they amount
3 to a substantial difference ultimately, to the individual,
4 say?

5 MR. ESTEY: No, I think not. And I
6 would say - although some of these gentlemen might wish
7 to talk about this - I would guess that in the
8 technological shift occurring in our plants now, that
9 the trend is away from this compartmentation and
10 specialized treatment to a more general, less skilled
11 worker who is more versatile and who operates more
12 machines and this kind of a fellow gets a rate of pay
13 which you can measure against a carpenter or plumber
14 and I think there is less and less of all these
15 classifications in the contracts. I may not be
16 correct in that.

17 MR. POLLOCK: There is a general
18 movement, I suppose, in your particular industry to
19 salary rather than a wage base.

20 MR. ESTEY: I think not.

21 MR. POLLOCK: I thought I would run
22 it up and see if anybody bit.

23 MR. ESTEY: Then turning to the collec-
24 tive agreement, this is a subject which I know has
25 been talked out in front of this Commission and I am
26 going to be very brief on it. Our view is that,
27 first of all, the collective agreement should be
28 binding on both sides. It, of course, can only be
29 binding if you have a party on both sides, a legal
30 entity. A trade union is not a legal entity in Ontario

1 outside the Labour Relations Act and therefore, in
2 summary, we believe - and I am going to put two topics
3 together here, later on I come to the status of the
4 trade unions - we think that we should elevate the
5 trade union to the status it has in the United States
6 and that it is a party to a contract which can be
7 enforced against its treasury, because that is what
8 we are talking about and we think that responsibility
9 would go with that change in the law.

10 THE COMMISSIONER: Take an award of
11 damages under the agreement, can't that be enforced
12 today?

13 MR. ESTEY: That goes against the
14 treasury of the trade union because that is inside the
15 Labour Relations Act.

16 THE COMMISSIONER: It is a violation
17 of the term of the agreement.

18 MR. ESTEY: Yes.

19 THE COMMISSIONER: You must have some
20 liability that lies outside of that.

21 MR. ESTEY: Yes, and this kind of
22 liability usually arises - we speak more in fear than
23 in realization here because we have not had strikes,
24 but this kind of liability usually arises as we see
25 in the construction industry right this day, this
26 morning in Toronto, where some trade union leader,
27 for his own advantage, either political or economic,
28 says, "My men aren't going to go to work this morning".
29 Or he says, "If you hire local 607's men, I won't
30 supply my men from 103". Now this kind of a fellow

1 is personally amenable to the courts. Presumably, the
2 laws of England still apply here on that subject and
3 Brookes and Bernard and these other cases could be
4 applied and you could sue him but he is not going to
5 have any resources to pay the damages and the trade
6 union is aloof from it. Our position on that is that
7 we should be able, on a proper case - and I underline
8 that word "proper" because there must be limitations -
9 to be able to hold the trade union up to the discipline
10 of the courts and not be confined to arbitration by
11 these boards which may not be amateur, but are not
12 professional.

13 THE COMMISSIONER: Generally speaking,
14 are they incorporated in the United States?

15 MR. ESTEY: Generally speaking, the
16 United States either has them incorporated by definition
17 in the statute or treats them as though they were
18 incorporated. In England, of course, it is a little
19 confused now because of the Stratford case and the
20 Brookes and Bernard case as to when you can reach into
21 the trade union and when you can't and we would prefer
22 to have certainty, one way or the other, rather than
23 have that which now prevails in the United Kingdom.

24 MR. POLLOCK: On page 10 where you say
25 that the collective agreement should be binding on the
26 trade union, in fact it is binding upon the trade union
27 by section 37 or the Labour Relations Act.

28 MR. ESTEY: Yes.

29 MR. POLLOCK: And that you have
30 recourse to a remedy under the collective agreement?

1 MR. ESTEY: That is correct.

2 MR. POLLOCK: So it is really ---

3 MR. ESTEY: I think it is 38 (e) that
4 makes it binding on everybody.

5 MR. POLLOCK: 37 isn't it?

6 MR. ESTEY: Yes, you are right. And
7 elsewhere in the Act it is made binding upon employers
8 and so on but we say that the liability, the problem
9 in a nutshell is that, oddly enough, you can get your
10 remedy against the trade union in an informal court
11 but you can't get them into the courts which all the
12 rest of us must answer to. It is an anomaly and
13 there is no way to appeal from that other board except
14 by writ of certiorari into the traditional courts of
15 the land.

16 Now, just on principle, we submit that
17 is not correct.

18 MR. POLLOCK: You want to eliminate
19 the Rights of Labour Act and its restriction in both
20 cases against making a contract or collective agreement
21 subject to an action and also remove the protection
22 against the union as a suable entity?

23 MR. ESTEY: Yes, I think we want to
24 amend both sections 3 and 4 to bring them into the
25 law the same way as the rest of society is. On the
26 other hand, I don't want to overstate this case, we
27 don't believe it would serve our interest and those
28 of the community at large to have the trade union
29 subject to all manner of law suits because some of
30 their members have taken some step which they couldn't

1 prevent.

2 THE COMMISSIONER: I was going to say
3 you would normally have to bring it home to responsible
4 direction in the union before the union would be liable.

5 MR. ESTEY: That is right.

6 MR. POLLOCK: What would you suggest
7 as the basis of liability, running from absolute
8 liability that has been suggested and probably something
9 you are not suggesting now.....

10 MR. ESTEY: No, I am not.

11 MR. POLLOCK:...to no liability, which
12 is something you suggest should be changed?

13 MR. ESTEY: I think in this field
14 you have to use the generalities we see already in
15 the criminal code, that if the action in question is
16 carried forward in the bona fide interests of advancing
17 the trade union movement and is not contrary to law
18 including the collective agreement, then I would
19 hesitate to suggest we should have an action against
20 the trade union. The trade union should only be
21 liable if the action is either authorized or counten-
22 anced by their democratic organization and if it was
23 within the scope of the employment type of principle.
24 If it is wholly outside the trade union movement and
25 it is a completely isolated tort committed by an
26 officer even, but certainly by a member, I don't think
27 you should have the right to attack the trade union.

28 THE COMMISSIONER: What obligation would
29 you impose, if any, on a union where individuals were
30 disregarding the terms of the agreement or any decency

1 in regulating themselves? Would you make no requirement
2 of the union on such person by way of penalizing them
3 as union members?

4 MR. ESTEY: Yes, I believe there that
5 could be policed if the provision required that the
6 union expel such a member and failing suspension,
7 liable for the consequences of the man's act.

8 THE COMMISSIONER: Well, either
9 suspension or something else. The question of onus
10 might arise there. Would a union be called upon to
11 justify its having taken every reasonable step to
12 prevent this violation or would you say that would
13 have to be established by any person who was complaining?

14 MR. ESTEY: I think that that is the
15 practical solution to the problem because a trade union
16 cannot stop wildcat strikes if the workers genuinely,
17 individually decide they are going to withhold their
18 services. There is nothing you can do. But if the
19 trade union does nothing to penalize that worker then
20 they have countenanced it and perhaps there is an onus
21 on the trade union to show that it is not linked to
22 that action and that might be a buffer.

23 MR. POLLOCK: I think there are all
24 kinds of cases that you can conjure up in which the
25 trade union has gone through the formula of, enunciated
26 in Polymer, with tongue in cheek saying, "Don't do that"
27 and "You are not no longer a business agent or a
28 steward and you can do what you want now because we
29 have no control over you" and those cases where the
30 trade union has actually paid the fine of somebody who

1 is engaged in some unlawful activity on the picket
2 line and provided them, I think, recently with extra
3 meals and so on. I think if you made it more than
4 just their assertion that "We didn't want them to do
5 that" and put the onus on them to demonstrate that they
6 really are deprecating that kind of conduct, then I
7 suppose they may escape liability.

8 MR. ESTEY: There is no remedy at all
9 in our respectful view of allowing the trade union to
10 escape liability by saying "We instructed them not to
11 strike" because we see in the Toronto construction
12 industry that kind of formality being played out
13 almost every summer. Everybody knows, including the
14 people who are supposed to be taking the order that
15 they are really intending to go on strike. This kind
16 of nonsense doesn't help either side in the long run.

17 MR. POLLOCK: "We don't want you to
18 go on strike but if those conditions are so unsafe
19 that it might endanger you, you be the judge".

20 MR. ESTEY: Yes. Then, there is one
21 other element to this collective agreement to which
22 I would like to direct the Commission's attention
23 very briefly, and that is this, and I start with the
24 analogy of section 34 which says: "Thou shalt
25 arbitrate whether the contract says so or not and if
26 your contract provision doesn't measure up to this
27 standard, then this standard shall apply". We think
28 that legislative device is useful and should be
29 followed in a number of other areas. First of all,
30 we think the no-strike clause in the statute should be

1 read into each agreement by the same statutory device.
2 Secondly, we think that there should be ----

3 MR. POLLOCK: They do that in section
4 33, don't they? "Every collective agreement shall
5 provide that there shall be no strikes or lockouts...".

6 MR. ESTEY: That is right.

7 MR. POLLOCK: And if the collective
8 agreement does not provide that it may be added by the
9 board.

10 MR. ESTEY: We want to take that
11 within the Act and add to it a clause which may sound
12 innocent but which is of vital importance to a complex
13 industry employing more than one union, that a trade
14 union must cross a picket line to honour its collective
15 agreement unless the picket line is established lawfully
16 by that trade union.

17 MR. POLLOCK: You can put that in your
18 collective agreement.

19 MR. ESTEY: If you can get it in, yes.

20 MR. POLLOCK: If you can't get it in
21 your collective agreement, I think it is probably more
22 difficult to get it into this legislation.

23 MR. ESTEY: Let us think about that.
24 In many of the plants we are talking about here, you
25 might have 4 or 5 trade unions. Some are as high
26 as 8. Some of the bargaining units will be as low
27 as 2 because of the stationary engineers. Now, if
28 they all are bound to the union movement and solidarity
29 in the union movement is a good and necessary thing -
30 I am not trying to split them off - the trade union

1 movement would not be where it is today if they didn't
2 have cohesion, but the community suffers if the need
3 for union cohesion is forced by that need to honour
4 a two-man picket line on an issue which they don't
5 believe in such as international pension veto. They
6 can't cross that picket line because it is in their
7 constitution and they will all be suspended and their
8 pension benefits outside the country cancelled or
9 suspended or somehow put beyond their reach. They
10 might be expelled.

11 MR. POLLOCK: They are also subject
12 to breach of their collective agreement to go to work,
13 the contract of employment.

14 MR. ESTEY: That is right. They are
15 put in a very difficult position. We only need to
16 cast our mind back to the travails of Orchard and Honey
17 to see what a man is put to and there he would have
18 had no remedy if the trade union had acted properly,
19 if the constitution had been proper and then filed
20 with the Labour Relations Board of that province and
21 the man had been expelled in accordance with it, but
22 he had no remedy at all. So we are asking, and we
23 think, and of course it is egotistical and one-sided
24 thinking, but we think that the trade union members
25 would not be opposed to an inclusion in the statute
26 of an expansion of section 33 requiring them to cross
27 a picket line unless it is one established by their
28 own local and lawfully established. Then they are
29 free to go to work.

30 MR. POLLOCK: Let me stop you there for

1 a moment. If that is your supposition as to the
2 attitude of the trade union people, why in some cases,
3 and in particular the Toronto newspaper strike with
4 relation to the mailers, is there a clause in that
5 collective agreement which gives the option to the
6 individuals to respect the picket line without any
7 penalty? If that clause wasn't there, perhaps they
8 would have been subject to a breach of their contract.

9 MR. ESTEY: That option does not go
10 far enough.

11 MR. POLLOCK: That option in your
12 situation should be removed first.

13 MR. ESTEY: That is right, they should
14 be required to honour their collective agreement.

15 MR. POLLOCK: Well, you can require
16 them by the normal process of the courts to do that
17 today.

18 MR. ESTEY: To the extent that you
19 can get anywhere, yes, but it is not an effective
20 remedy and it is not effective either way.

21 MR. POLLOCK: If you put it in
22 legislation, how does it become more effective?

23 MR. ESTEY: It becomes effective
24 because you then protect the man from any inside the
25 union consequences. If any one of us were put to that
26 trial where we cross that line, there will be as many
27 different decisions and lines of reasoning as there
28 are people in the room because you have got pension
29 problems, you have got seniority problems, maybe you
30 are a steward working your way up to chapel chairman,

1 there are all manner of considerations and you put
2 them all on the line when you cross that picket line
3 and it should not be so. Your fundamental obligation
4 should be to perform your master-servant contract as
5 modified by the collective agreement. That should
6 be the fundamental, the keystone. After that comes
7 your loyalty to the organization which bargained that
8 contract out for you and after that, your loyalty to
9 the employer and the community at large. But firstly
10 the man should be relieved of the difficult decision
11 of crossing that picket line.

12 MR. POLLOCK: You would have to change
13 the union constitution.

14 MR. ESTEY: You would simply have to
15 put it in the statute which, of course, does change the
16 constitution. Those U.S. constitutions do not have
17 an obligation to arbitrate in them.

18 MR. POLLOCK: No, but there are other
19 factors that are included in the constitution that
20 are contrary to this legislation which, as you and I
21 know the operation of law, says that this, in Ontario,
22 governs.

23 MR. ESTEY: It overrides it.

24 MR. POLLOCK: But the union doesn't
25 deem it that way. They look at the constitution and
26 say "All right, we are going to discipline you" and
27 until this member gets to the court and says "This
28 provision should be read out of your constitution",
29 the governing law is the law of the constitution.

30 MR. ESTEY: That certainly is true.

1 It was truer yesterday than it is today. It is truer
2 in international unions than it is in Canadian because
3 the international union doesn't understand Canadian
4 law as well as the domestic union but I don't think
5 it is a serious factor now, Mr. Pollock, because the
6 labour movement is not founded on a lawless approach
7 to this problem.

8 THE COMMISSIONER: Not founded on what?

9 MR. ESTEY: On a lawless approach to
10 this problem. Basically they want to conform to
11 the Labour Relations Act. They know there is trouble
12 if they get outside it and they know if they go back
13 up to Queen's Park and get it amended, if they have not
14 obeyed what is there they won't be heard. We don't
15 run into that kind of trouble as much as we used to.
16 If the law says "This is what you do", generally
17 speaking there is an adherence to the law, a willing
18 adherence and in our respectful view, the trade union
19 movement would like to have their status clarified
20 so that their primary obligation is to earn their
21 living under their contract. It is a tremendous
22 hardship on a worker who has to stay out of work
23 because 6 electricians are in a dispute with his
24 employer and he has 985 people.

25 MR. POLLOCK: But the trade union
26 movement, in some cases, in Toronto in the construction
27 industry and in Hamilton, I think, in the construction
28 industry, have eliminated that difficulty by removing
29 the picket line altogether unless there is somebody
30 starting to do their particular type of work and so the

1 other trades will cross.

2 MR. ESTEY: That is another solution
3 to the problem.

4 MR. POLLOCK: In Sault Ste. Marie
5 in a recent strike up at Algoma Steel, the steelworkers
6 had a contract and they decided it was their duty to
7 honour that contract and they went to work, they
8 crossed the picket lines, 3000, I forget how many.
9 One of the trades didn't and in breach of their
10 contract, refused. I suppose education is the answer,
11 to tell these people that they are obligated by their
12 contract of employment to cross picket lines.

13 THE COMMISSIONER: Well, it goes back
14 to the question of loyalty, that is all. This
15 cohesion you speak of is essentially loyalty - loyalty
16 to a group, loyalty to objectives of a group and
17 it strikes me that it is a futile thing to depend upon
18 the individual to exercise his discretion unless he
19 has universal support as the steel people had in
20 Sault Ste. Marie. I think the only possible thing
21 to do is to make it statutory or, in some form or
22 another, abolish it.

23 MR. ESTEY: Mr. Commissioner, that is
24 our view and I might say on leaving this subject and
25 perhaps referring to Mr. Pollock's situation, I think
26 you would find in analysing this question, you will
27 find that the larger the union the greater the chance
28 is that they will cross the other union's picket line.
29 Conversely, the smaller the union the less likelihood
30 they will cross and that is natural because the small

1 union can only succeed if he is loyal to the big
2 movement. The big union can make its own laws as it
3 were.

4 THE COMMISSIONER: It is a most
5 difficult position to put any man in, no matter who he
6 is. He is grouped together for certain objects which
7 have justified themselves over the years and now he
8 feels that here is a questionable decision. Shall he
9 respect it or not? It is not an easy situation for
10 anybody to be placed in.

11 MR. POLLOCK: I suppose in your situation,
12 like French grammar, it is the exception that proves
13 the rule and I suppose the Teamsters would respect
14 every picket line.

15 MR. ESTEY: Well, the Teamsters are
16 different altogether. No matter how you look at them
17 they are different. First of all, they have operated
18 differently. They are nomadic. The Teamsters' Union
19 is a union of nomads and obviously they have lived
20 by their wits in the different jungles and so they
21 have a different code. They don't support everybody,
22 they are a funny organization. Down in New York
23 the newspaper union supports the Teamsters and vice
24 versa, because they are locked into that tight little
25 island and they can't operate without the Teamsters.
26 The Teamsters rule the roost and newspapers are going
27 to disappear. They are down to one now in the
28 evening. There is a case where the Teamsters support
29 them. You take the electrical industry, the electrical
30 industry had a big strike here a while ago and the

1 Teamsters did not support it.

2 MR. POLLOCK: Which union?

3 MR. ESTEY: U.A.W. The Teamsters are
4 an exception because they are a different kind of union
5 and I don't say it critically, they are different and
6 they have to be and they operate differently. Sometimes
7 they are out of the Canadian Labour Congress and sometimes
8 they are in, they are thrown out of local trade councils
9 and they are in, they are checker-boarded, you can't
10 type the Teamsters' Union and I don't think you can
11 say that it is internationally dominated as much as
12 some unions either. It is a peculiar organization.

13 MR. POLLOCK: Not anymore anyway -
14 for 8 years anyway. I suppose if the Teamsters are
15 nomads, then the employers are bedouins. Perhaps we
16 could take a short break at this point.

17 ---Short recess.
18

19 MR. ESTEY: Mr. Chairman, I was just
20 going to deal with the question of strikes. Before
21 getting into that, may I say again that our position
22 in this whole field of strike is one not of experience
23 on the receiving end of strikes or volume of strikes
24 or near strikes but rather our position on this subject
25 is that labour relations is a whole topic. It is not
26 a series of little pieces of pie which, when fitted
27 together present the whole. Labour relations is a
28 whole entity and it is either in balance or out of
29 balance and if it is out of balance we are going to
30 suffer whether or not we are faced with strikes. Our

1 view, therefore, of strikes is what is the role of the
2 strike, if any, in labour, secondly, if it has a role,
3 what are the limits when this weapon might be invoked
4 and, thirdly, if the weapon might be invoked within
5 proper limits, what are the rights of management during
6 a strike?

7 THE COMMISSIONER: Now, just before
8 you reach that, what are the elements involved in this
9 balance you speak of?

10 MR. ESTEY: I think the first element
11 is, of course, the absolute right of a worker to
12 organize and to speak through a single voice without
13 jeopardizing his employment. That is his first right.
14 The second right is the absolute right of management
15 to operate the plant or not operate it according to
16 the economy of the community in which the plant is
17 located. Now those two things are immediately out of
18 balance because the management is wanting to get the
19 labour at the lower cost and labour wants to sell at
20 the highest cost. So now we have to have a bridge
21 device and we say the bridge is in three tiers, first
22 of all, it is negotiation which means genuine attempts
23 to meet the minds of the two parties, secondly a
24 contract which will reflect that result and, thirdly,
25 for the machinery to enforce the contract. So now
26 you have the worker here with his rights and the
27 employer here with his rights and you have a bridge
28 which is permanent. It must be renewed within certain
29 frameworks.

30 Now, that balance can only be maintained

1 if, in the bargaining process, the workman can say
2 "I am not going to work for those wages" and not lose
3 his job: Secondly, the employer must be able to say
4 "I can't afford to run the plant with those wages" and
5 not sign the uneconomic contract.

6 If, after we get into that harness, we
7 then put management in a position where it cannot
8 speak, cannot address itself to its workers and say
9 "These are the essentials of life in this plant" then
10 I think it is out of balance. Conversely, if the
11 trade union can come in and say "In Montreal we have
12 the right to a certain ratio of apprentices to
13 journeymen and we must have it here" just because it
14 is in Montreal, then I think again it is out of balance
15 and the only way we can keep this thing in balance is
16 to have a forum where debate can take place without,
17 on the one hand, the loss to the community of production
18 and, on the other hand, the loss to the worker of his
19 employment. Then I think it would be in balance.
20 What we are talking about here in strikes is based on
21 a recognition that if the workman does not have the
22 right to withhold his labour, he has no economic force
23 going for him at all. Secondly, if the employer does
24 not have the right to say "I can't afford to hire you
25 people, I am going to hire elsewhere", then he has
26 no economic forces working for him. So we both,
27 therefore, must have recourse to this right - the strike
28 on the one hand and the right to go elsewhere for
29 labour on the other.

30 The problem of that is that that takes

1 us back to the law of the jungle which, in our respect-
2 ful view is not going to recur. We are not going to
3 get back into the area where you can strike me and I
4 can lock you out without any rules. That is not going
5 to happen. We immediately start to cut down by
6 saying "Well, public utilities must be elevated above
7 the area of strike, police forces must be elevated
8 above". Maybe we will come to school teachers, I don't
9 know, but there are regions where the community can't
10 now operate if there is a right on one side to lock
11 out ultimately and an ultimate right on the other side
12 to strike. We are not in any of those sensitive areas
13 in this industry. The whole of the printing industry
14 could close down and I am sure the community would
15 survive the experiment. That is not true if all the
16 dairies closed down, or the hospitals or the police
17 forces. So, let me then concentrate on the balance
18 in the area where there has to be this right to withhold.

19 One of the things that happens, of
20 course, when you withhold services, if the plant is
21 small enough the worker says "Let us close it down
22 so that his mortgage payments will force him to do
23 business with us". I am putting this in the realistic
24 terms of what happens. Well, the way to close a plant
25 down is not just to walk out: That won't close it
26 down because the supervisors will run the machines.
27 The only way you can close a modern plant down is to
28 tie off the arteries of supply and delivery. That
29 means you put a picket line up and that means you must
30 have loyalty or cohesion in the union movement to honour

1 the picket line and sterilize that piece of earth so
2 that nobody will take a product away from it or take
3 a supply into it and then that plant will close down.

4 THE COMMISSIONER: But that depends
5 in large measure on the number and quality of skills
6 that are required in that industry.

7 MR. ESTEY: Yes, sir, but no amount
8 of skill can run the plant if supplies can't get in.

9 THE COMMISSIONER: But if you have
10 5000 men striking and no possibility of resorting
11 to the labour market to enable you to continue
12 production.

13 MR. ESTEY: That is quite right. I
14 started by saying that the small plant is the ideal
15 one to examine because both things can happen there.
16 One, you can sterilize it because it is a small target
17 and, secondly, you can run it because it is a small
18 operation and with automation and with lower output,
19 many plants will operate. The trouble starts in a
20 number of ways but let us take an easy one. A small
21 printing plant might be adjacent to, or in close
22 proximity to a steel plant. The small printing plant,
23 let us simplify this, has one trade union and that
24 trade union can't make a bargain with the employer for
25 any reason. They are in good faith but they just
26 can't have a meeting of the minds. Now, the printer
27 can continue to operate and, therefore, the employees
28 have a meeting and say, "Look, we can't walk away
29 from this plant because if we do we will lose our jobs,
30 that man will run it and there will be a fraction of

1 us who will continue to work for him". So what they
2 do is, they form a picket line and they call upon the
3 neighbouring plant which we might say has the United
4 Automobile Workers in it, a very big union, on shifts
5 so there are always 3000 or 4000 people available
6 and they put a thick crust of people around the plant
7 so that you can't get in or out. That brings the
8 plant to a stop. Now that, in our respectful view,
9 destroys the balance which is the essential of life
10 in labour relations because that means that employer,
11 the printer, knows that every two or three years he
12 has to reach a contract with that union and if he
13 doesn't he is out of business.

14 We have seen that happen in Peterborough
15 and we have seen it happen in Oshawa. This takes us
16 to, of course, the right of the worker once he decides
17 to go on strike. What is his right? We say his
18 right has been well described in the laws up until now.
19 He has the right to communicate the fact to the community
20 that he is on strike and why he is on strike and he
21 has the right to stop anyone from going into that
22 plant and saying to them, "If you go in the plant
23 you are going to defeat my objective of getting better
24 wages or better working conditions". He has that
25 right. He has the right of communication and the
26 right of persuasion. Now the rights he does not have,
27 in our views of things, have been honoured in the loss.
28 One is he does not have the right to physically
29 interferewith people leaving and going into the plant.
30 Secondly, he does not have the right to induce a breach

1 of contract with people who have contracts with that
2 plant. Now the law on the latter point is rather
3 unclear but I am thinking in terms of the General
4 Dry Batteries' case where the courts found that
5 communicating did not mean the right to shut a plant
6 down and we are thinking of the barge case in England,
7 the Stratford Shipping case where the trade union
8 tried to induce a breach of contract with people
9 supplying barges to a company they were picketing and
10 the courts found they did not have that right. We
11 think that this needs to be restated in Ontario because
12 the matter has been distorted now by people who either
13 have an axe to grind or who are uninformed that there
14 is a place where the right to strike becomes unlawful
15 and that place is when the striker in withholding his
16 work has gone beyond the communication of that fact
17 and the peaceful persuasion of the community to support
18 him.

19 On the other side of the coin, the
20 employer goes beyond his limits if he decides precipi-
21 tously to invoke the strike by saying to the workmen
22 "I am not going to give you an increase in wages". He
23 knows he can, he knows that comparatively he should
24 but he won't. He then can't lock out because he has
25 not bargained in good faith. That is a basic right
26 that is necessary for balance.

27 There are other examples where the
28 employer may not and can be unlawful in his exercise
29 of his right to lock out if that is the term, or his
30 right to continue to operate the plant. For example,

1 he may not conspire inside the trade union to undermine
2 it by interfering with their bargaining process, by
3 rewarding people or threatening people. These are
4 ancient devices which have been prohibited by law
5 and the prohibitions are essential for balance.

6 MR. POLLOCK: What if the employer
7 in your example you said the employer should have the
8 right to say "I am not going to hire you people, you
9 cost me too much. I am going to hire some other
10 available people to replace you". Well, in some areas
11 people are hired not to replace these people but to
12 defeat their cause, the so-called professional strike
13 breakers, the person who is brought in at a higher
14 rate of pay than the other people are working for.

15 MR. ESTEY: Or were offered.

16 MR. POLLOCK: Or were offered, merely
17 to defeat the strike itself and not to continue an
18 operation economically but to reduce their bargaining
19 position of the union down to a level where they have
20 to accept his position. What about those circumstances?

21 MR. ESTEY: I think that is as wrong
22 as the opposite situation is where they go on strike
23 not because they can't get what they want but because
24 "This fellow is a tough employer and we think we will
25 do better in the industry if we can knock him out." One
26 is as wrong as the other.

27 MR. POLLOCK: But as long as the motive
28 is an economic one in the sense that your demands
29 economically are too great for me to meet and I can
30 find people in the available labour market today to

1 replace you at the wages I am prepared to offer and
2 I can do that, that is a legitimate purpose.

3 MR. ESTEY: Yes, that is right.

4 MR. POLLOCK: Now, as far as the
5 picketing is concerned, you say they communicate
6 information around the plant and that the employer can
7 operate his plant if he can find people to do it. What
8 about if he sub-contracts parts of his operation and
9 part of the assembly is done somewhere else and it is
10 brought into the plant and shipped from the plant? Are
11 these areas where this work is being done, as a
12 technique to continue operations, are they available
13 to be picketed? They are an ally, so to speak.

14 MR. ESTEY: I think you have to look
15 on that in the general concept of management of a plant.
16 Some plants, Mr. Pollock, will essentially drift from
17 fabrication and sub-assembly to assembly to a holding
18 company whether or not there are labour relations.
19 That movement might be accelerated by the demands for
20 workers making divisions of the plant uneconomic in any
21 case. Though I would think that it is a natural
22 function for a plant management to drift to sub-contracting
23 with or without the prod of a labour contract, on the
24 other hand, if the sub-contracting were done in order
25 to cow a union into submission then I think that also
26 is as wrong as though he had bribed someone to replace
27 a worker at a higher wage.

28 It is not such a difficult thing to
29 factually determine either because if his sub-contracting
30 arrangements are temporary and are more costly,

1 demonstrably more costly than his previous assembly
2 and fabrication operation, then I think it is an
3 unfair labour practice but the right of management to
4 sub-contract is essential if this community is to
5 enjoy an increasing standard of living because the
6 whole of our technology today is aimed at specialization
7 and sub-contracting is another way of talking about
8 specialization.

9 MR. POLLOCK: I appreciate that is the
10 distinction. I just wanted to make sure that we were
11 of like minds on it. It is the same, I suppose, as
12 the old allied problem of the runaway shop. If you
13 decided for economical reasons that you wanted to
14 move your plant somewhere else you did it but if you
15 wanted to do it only to avoid responsibilities to the
16 union, that is an unfair labour practice.

17 MR. ESTEY: We have a good example of
18 that very thing where a manufacturer in this metropolitan
19 area discovered that his labour contract referred only
20 to employees in the municipality of Metropolitan
21 Toronto so he sold his plant and put his plant 100
22 yards outside of Metropolitan Toronto and gave no
23 notice, he simply discharged the workers right and
24 left on their one hour's notice because they were
25 hourly rated and he hired new people and he, of course,
26 screened them in the new plant. Well, that type of
27 operation, of course, is not bargaining in good faith
28 and is wrongful and will always be condemned, I think,
29 in the statute, but that is not to say that mobility
30 is to be denied management. If they find -- well, let

1 us take Oshawa, it is uneconomic now for many trades
2 to be in Oshawa because they can't afford to pay a
3 man who is upholstering furniture as much as they
4 can afford to pay a man who is welding axles and so
5 the furniture maker has got to move and they all moved
6 out of Oshawa. On the other hand, the spare parts
7 manufacturers have hived in on Oshawa because they
8 have got to hire those skills and I think if you
9 distort those natural laws of economics the community
10 will pay the penalty.

11 THE COMMISSIONER: In the first
12 instance of the chap who moved the plant just outside
13 of the boundaries of Toronto, what would be open to
14 either party to do?

15 MR. ESTEY: Well, in fact, he was the
16 object of the greatest organizing campaign in history
17 and his plant was organized.

18 MR. POLLOCK: It is Amalgamated Electric
19 you are talking about in Markham?

20 MR. ESTEY: Yes.

21 THE COMMISSIONER: What could be done
22 in the way of pursuing against him?

23 MR. ESTEY: I think as the Act stood,
24 that type of employer could not be prosecuted unless
25 he did it in the course of a contract negotiation
26 in which case he didn't bargain in good faith, he just
27 dismissed everybody.

28 MR. POLLOCK: Well, proceedings were
29 taken on a declaration that this was an unlawful
30 walkout.

1 MR. ESTEY: I am not really discussing
2 Amalgamated Electric. It is an unreported decision
3 and involves one of the parties but I think if you did
4 it during contract negotiation, there is a remedy under
5 the present statute. If there isn't there ought to be.

6 THE COMMISSIONER: Do you mean to say
7 he couldn't sell his plant during neogitation?

8 MR. ESTEY: He could sell during
9 negotiations but, of course, provisions of the Act
10 now covers that the buyer takes over.

11 THE COMMISSIONER: But he would be free?

12 MR. ESTEY: He would be free but the
13 buyer takes the plant subject to ---

14 THE COMMISSIONER: That may be but I
15 am dealing with the owner. He could then go outside?

16 MR. ESTEY: It is as though he sold
17 his shares and he took his money and built his plant
18 outside. Yes, he can do that. That doesn't hurt his
19 workmen because his workmen still have their rights
20 against this building as though there had not been
21 a change.

22 MR. POLLOCK: What happens in a
23 situation where you have a kind of a holding company
24 which holds employees and another company which has
25 the equipment? I am thinking of an example where
26 you have a trucking company that has no employees but
27 has a related company that has employees and it hires
28 its employees through that related company and says,
29 "All right, you are going to drive those trucks" and
30 you get a dispute, you can't picket - first of all, you

1 can't get certified for the company that has the
2 trucks, the trucking company, that hasn't any employees
3 so you can't picket them because you haven't any
4 employees there but you picket the construction site
5 or whatever it is, it might be far away and these
6 people are still running the trucks, the employees
7 are not physically there, they are these nomads that
8 have moved around.

9 MR. ESTEY: This raises a great problem.
10 That sometimes is called secondary picketing when it
11 happens and they can't do it.

12 MR. POLLOCK: It is always called
13 secondary picketing.

14 MR. ESTEY: Not always. I wish that
15 were so, but I have lost a few of those.

16 MR. POLLOCK: I wish you would tell us
17 which ones they were because we haven't been able to
18 find them.

19 MR. ESTEY: Well, I can think of two
20 or three examples that might help.

21 MR. POLLOCK: Perhaps you might let us
22 know when you get back to your office. Just drop us
23 a line.

24 MR. ESTEY: To answer your question
25 I would think that in this holding company case that
26 used to be a much practiced dodge, as you are well
27 aware, that you would organize your corporate structure
28 so that one company had all the employees and another
29 company ran the payroll. So then the organizers come
30 in, they don't know which camp to attack and usually

1 what happens is they apply at the wrong company and
2 have to back up and start over again. Eventually,
3 they get certified. Now, I believe the law to be
4 that they can picket any place of work where those
5 men are employed in the course of their duties for the
6 company who does employ them. You have no rights
7 against this vehicle-owning company but you don't need
8 them. These men have to go there to pick up the
9 vehicles and you can picket those premises but you
10 cannot picket in the Wellesley Hospital case, for
11 instance, you cannot go down and picket the Wellesley
12 Hospital because some of those trucks go down there
13 and that is, in my respectful view, proper. If you
14 could do that then because^{of}the loyalty of the union
15 movement, all the carpenters on the Wellesley Hospital
16 job, who must make their hay while the sun shines
17 in this climate, are out of work in the middle of
18 summer and for no good to them.

19 This takes me ahead and perhaps that
20 is what we should be doing anyway, to this question of
21 what is the rightful limit of picketing.

22 MR. POLLOCK: I don't want you to jump
23 ahead any faster than you want to.

24 MR. ESTEY: I would like to move on
25 to that anyway, but one thing I would like to mention:
26 We talked of mass picketing. It seems in our view to
27 be equally wrong that a man who is not part of the
28 bargaining unit should be allowed to come and picket
29 the premises. We have some bizarre examples of that
30 which are not in our brief but let me tell you of one.

1 A construction project - and this just came out of the
2 courts - a construction project on the east side of
3 Toronto was being manned by Canadian unions and the
4 international unions took great umbrage at this
5 and they picketed the premises and they said "If you,
6 the general contractor, continue to hire that plasterer
7 who hired Canadian plasterers and not the International
8 Brotherhood of Cement Masons and Plasterers, we will
9 withdraw the electricians, et cetera".

10 MR. POLLOCK: The lathers.

11 MR. ESTEY: The lathers is the example,
12 that is right. And that happened. So they withdrew
13 the lathers. Now, nobody gains by this internecine
14 warfare. It is just a dispute between a national
15 and international union as to who is going to grow.
16 Meanwhile, they don't want to get themselves too
17 far in offside so they don't use as a picketer, any
18 of the electricians and lathers: They had a man - I don't
19 know where they got him, perhaps he was a vagrant - but
20 in any event they put a sandwich board on him which
21 had a question mark on it and he parades up and down
22 and nobody will cross that picket line. Now the
23 contractor comes in and he says -- this is a very
24 practical legal problem -- the contractor says,
25 "The mortgage payments are falling due and I can't
26 pay them unless I finish the building and get the
27 tenants in and I have got interim financing to carry
28 me to the end and then there is that 6 per cent and
29 the bank says if I don't get that mortgage draw by the
30 end of June, then they are going to call the bank loan

1 and I am bankrupt". So he says "I had better fire all
2 those Canadian plasterers". Meanwhile, he has an
3 ironclad contract with that plastering sub-contractor
4 that he can't fire them. But the damages for breach
5 of contract are lower than the damages from bankruptcy
6 so he does terminate the contract. Now, this really
7 isn't labour relations at all. This is simply
8 organizational warfare. Surely, that injunction which
9 did issue is wholly proper and is necessary for this
10 community. Not only that, it is essential that the
11 criminal code be applied and it was applied. The man
12 who picketed with the question mark on him was convicted
13 of watching and besetting.

14 MR. POLLOCK: But surely he was
15 communicating and obtaining information. He had the
16 question mark and was there to ask questions.

17 MR. ESTEY: Yes, he did and the code
18 covers that if the man was bona fides but the court
19 found he was not. There is a great number of questions
20 about this injunction and clearly it must be answered
21 the wrong way. There are unlawful injunctions that
22 should never have been issued but there must be a case
23 and I am sure that construction example is one where
24 there has to be an injunction issued and there has to
25 be a criminal consequence to a man who lends himself
26 to that nonsense and the injunctions that we need go
27 further than that. Surely they go to the extent where
28 the mass picketing occurs simply to collapse a plant,
29 the calling in of mercenaries from some other union.
30 Surely the Peterborough situation is one where the law

1 must be honoured and surely the Hersey's case where
2 the retailer in Woodstock was picketed because he
3 bought the shirts manufactured in a struck plant in
4 Belleville, the Deacon Shirt.

5 MR. POLLOCK: It was not struck, though,
6 was it?

7 MR. ESTEY: I think it was. I think
8 there was a picket line there.

9 MR. POLLOCK: The boys were working
10 there.

11 MR. ESTEY: They carried the plant on
12 but they didn't use union labour. They used some
13 union labour and some non-union. The picket line was
14 down there and the picket line was in Woodstock but
15 Deacon Brothers had been through two of these. I am
16 talking about the retailer's case.

17 MR. POLLOCK: Hersey's of Woodstock,
18 but I think in the particular facts of that situation
19 there was not a strike going on at Deacon Brothers at
20 the time.

21 MR. ESTEY: The union had a quarrel
22 with Deacon Brothers, let us put it in that fashion,
23 and they said to the retailer, "You will not sell those
24 Deacon shirts".

25 MR. POLLOCK: They didn't say that.
26 They said to the shoppers, "Don't buy the Deacon Brother
27 shirts. Buy something else".

28 MR. ESTEY: But the evidence did include
29 the statement to the retailer that if he sold something
30 else, they would go away. But the court of appeal said

1 "Surely we are not at such a low stage of development
2 that you could call that labour relations. All that
3 is is intent to injure and we are going to enjoin it."
4 It didn't follow the Dry Batteries' case and say
5 "You can have two men in front of that retail shop".
6 They absolutely prohibited picketing so, without taking
7 the time of this Commission, I think a word should be
8 said on the other side of this debate which has been
9 largely unilateral in this community, that there
10 should be no labour injunctions. That would be, in
11 our view, our studied view, a retrogressive step and
12 we think our case stands on its merits so we don't
13 need to counterattack. The people who usually say there
14 should not be any kind of injunction are people who
15 have not had the experience of the retailer in
16 Woodstock or the contractor in the east side of Toronto.

17 One point I would like to mention in
18 passing on the strike is that we are now faced in this
19 twentieth century with a combination on both sides
20 of the bargaining teeter-totter. The employers combine
21 as does this group in the Council of Printing Industries
22 because you are more efficient and more effective and
23 the trade unions have long combined because it is the
24 only way that they really can make their will felt.
25 If they completely shut down an industry or if they
26 have the capability of shutting it down, then management
27 is going to listen to them. But there is a by-product
28 of this double combination, which is very offensive and
29 which is contrary to the interests of the community
30 and that is the discriminatory strike. If we sign a

1 labour contract, and I touched only gently in passing
2 on the practice of this Council, this Council actually
3 signs the contracts and it lists the employees below
4 its name who are going to be bound. The trade union
5 signs the contract on behalf of the trade union council.
6 In the course of bargaining for a new contract it may
7 be that we are unable to have a meeting of the minds
8 before we have run through the time periods in the
9 Labour Relations Act. At that time either side is
10 free to strike or lock out. We say that the statute
11 should go further than it does today and say that there
12 should not be a discriminatory strike, that the trade
13 union should not be able to say "There are 48 companies
14 covered by this agreement" and some of our agreements
15 are that broad, "We are going to pick this one and
16 that one because they are pretty tough fellows and
17 they always hold out for their rights, we are going
18 to strike those and not the rest". The result of
19 that in the long run is that everybody signs the same
20 contract, eventually it is settled and signed.
21 Meanwhile, they have inflicted an economic wound on
22 the two people they have selected as being fellows
23 who are too tough, they stand on their rights. That
24 is wrong. That allows them to do what management
25 properly can't do to a trade union and that is promise,
26 threaten and bribe its membership so as to cause a
27 change of officers or cause^{them}/to lower their demands.
28 One is as wrong as the other. We think the situation
29 is sufficiently clear, be we right or wrong, that we
30 need only point out that that is what is happening

1 today.

2 MR. POLLOCK: But you have got your
3 remedy, you just lock them out. That is what they
4 did in the United States in the trucking strike and
5 this is what they are doing here in Toronto in relation
6 to the construction industry.

7 MR. ESTEY: What I am saying, Mr.
8 Pollock, is that that is good fun and it is great for
9 the law business because it gets into all kinds of
10 law suits and everything but for the community interest
11 it is not good. It precipitates a fight which could
12 be avoided.

13 MR. POLLOCK: Is it a better interest
14 to say that you must strike all these people?

15 MR. ESTEY: Yes, because they won't.
16 The reason they won't is that all of their men are
17 out of work and they are all on union assistance and
18 they can't afford it but they can afford to lock out
19 two and collect some money and pay to the employees
20 of the two. Of course, in our industry it is even
21 worse. All of those men are wholly mobile and they
22 are into another plant, they are supplied as workers.

23 MR. POLLOCK: It seems to me you are
24 in a very advantageous position because you have got
25 a group of employers organized that can put that
26 alternative to the union -- "If you strike one or two
27 you are striking us all, we are locking the rest of
28 you out."

29 MR. ESTEY: Yes, that is the position
30 we would have to take and one which we do not want to

1 have to be put to and I don't think the community
2 benefits because they are now calling someone's bluff
3 and sure as we are alive today, there will be an issue
4 of pride and they will go on strike and you would avoid
5 that if they didn't have the right to be selective.

6 THE COMMISSIONER: You assume that
7 the initial proposal is made applicable to all the
8 companies which you represent?

9 MR. ESTEY: Yes, and it is.

10 THE COMMISSIONER: They do that?

11 MR. ESTEY: They do that.

12 THE COMMISSIONER: Could they specify
13 a discussion on the two which they later decide to
14 strike?

15 MR. ESTEY: I have not known about it.
16 I don't think you could bargain in good faith and do
17 that, no. I don't think a trade union could say, "The
18 linotype operators in A company should be given a
19 different kind of working shift than the ones in B
20 company and if they don't take it in A we will go on
21 strike".

22 THE COMMISSIONER: That is really
23 subjecting them to a sort of industry wide negotiation
24 which certainly is not in effect yet here.

25 MR. ESTEY: We have industry-wide
26 negotiations.

27 THE COMMISSIONER: Voluntarily?

28 MR. ESTEY: Yes.

29 THE COMMISSIONER: But it is really
30 introducing not an objectionable view at all but an

1 industry-wide negotiation?

2 MR. ESTEY: It is not really introducing
3 it, sir, because it still only applies to the renewal
4 of the contract and everybody has voluntarily got into
5 this camp. You could still withdraw from the camp.
6 We have people who do withdraw. There is procedure
7 in the Act where you give notice and withdraw from a
8 bargaining pool but so long as you are in that
9 bargaining pool and so long as the trade union is
10 negotiating with it, we don't think they should be
11 able to single out somebody and say "We are going to
12 strike that one".

13 MR. POLLOCK: Would you have enough
14 unity of interest in your organization if the trade
15 union did say "A and B employers, we are going to
16 strike you"? Would the other 42 come to the assistance
17 of those two fellows, or can you take the position
18 of the packing house employees where they went on
19 strike against one company and quickly one of the other
20 companies hired everybody that was on strike and boasted
21 to the Department of Labour that they were now the
22 largest employer of packing house workers in the country?

23 MR. ESTEY: The experience has been
24 in this very group prior to the C.P.I. days when that
25 happened the management did stick together.

26 MR. POLLOCK: You have nothing to fear
27 then.

28 MR. ESTEY: My guess is they would
29 stick together again. I am not here trying to sharpen
30 our axe: I am here trying to point out on behalf of

1 this group that as a field, labour relations could be
2 improved by some adjustments and one of the adjustments
3 is to prevent this kind of confrontation.

4 THE COMMISSIONER: Is there such a thing
5 in effect as strike insurance?

6 MR. ESTEY: Yes, this strike insurance,
7 sir, is a very appropriate observation. This matter
8 has been discussed more in the printing industry, I
9 believe, than in any other industry in the United
10 States and to some extent, here.

11 THE COMMISSIONER: The employer group
12 could get together then and join in an insurance to
13 meet the individual instance of which you speak.

14 MR. ESTEY: And this has become so
15 real in the United States that the trade union movement
16 has taken legal action to have these kind of pools for
17 insurance purposes/as being an unlawful step to be
18 taken by management, conspiracy.

19 THE COMMISSIONER: Have they been
20 successful?

21 MR. ESTEY: I don't know.

22 MR. POLLOCK: They have, in some cases,
23 had strike insurance declared contrary to public
24 policy.

25 MR. ESTEY: I know legal actions have
26 been started. I don't think there has been a
27 determination.

28 MR. POLLOCK: Short of strike insurance
29 you can have the same sort of things in the airlines
30 where American Airlines, I guess was on strike, and the

1 others all contributed.

2 THE COMMISSIONER: Would it meet the
3 situation if the other members of your Council refused
4 to employ strikers?

5 MR. ESTEY: Yes, that would go part way
6 but you get into the difficulty that if you need the
7 man and the union have the right to supply one and
8 they supply the man, he is qualified, he is a union
9 member, I don't think you could refuse to hire him.

10 MR. POLLOCK: I think that your
11 organization is in the happiest position of any
12 employers' group and I would hate to suggest a retrograde
13 step that would cause your group to break down. I
14 think everybody ought to take a lesson from your
15 organization and the advantages that common interest
16 can serve and give you a gold star.

17 MR. ESTEY: We are not coming here
18 because we can feel the knife bite on the back of our
19 neck and there are many industries that can't do what
20 the printing industry has done here because they are
21 competitive amongst themselves much more so than in
22 printing and it is unnatural to combine as closely
23 as these people have been able to do for labour rela-
24 tions, but we think that it would be an improvement
25 in the Act at large if that could be introduced. I
26 have made my point and I won't labour it.

27 I touched upon injunctions. I wanted
28 to mention only in passing, one more item and that is
29 that if we are going to be left, if there is going to
30 be a mechanical change to this Labour Relations Act

1 rather than a philosophical change - and we hope there
2 will be a philosophical change because this is an
3 old machine we have got here and I think in many
4 areas outmoded but if we were thinking of adjusting
5 the machine rather than redesigning it, then we should
6 consider section 17 of the Judicature Act as it bears
7 upon injunctions.

8 Some 3 or 4 or 5 years ago there was
9 a very strange amendment put into that statute which
10 said that in effect you can't get an ex parte injunction
11 and whatever injunction you get runs for 4 days and
12 you cannot issue an interim injunction. It put the
13 courts to quite an exercise of either legal brains or
14 legal imagination in the Century Builders case which
15 found that the legislature didn't really mean what it
16 said and therefore, the courts still can issue an
17 injunction, whatever you call it, which runs from the
18 interlocutory period of issuance until / trial or
19 other disposition of the action. Now, in that connec-
20 tion, we would urge that this Commission report that
21 that section does not contribute anything to labour
22 relations but makes us all guilty of the charge of
23 weaseling out on wording and getting into an area
24 where there may be some question about the propriety
25 of injunctions because the plain English of the section
26 would indicate that you shouldn't have them.

27 THE COMMISSIONER: I must say I don't
28 quite grasp just what your complaint is.

29 MR. ESTEY: Section 17, sir, used to
30 provide that the Supreme Court of Ontario could issue

1 an ex parte injunction.

2 THE COMMISSIONER: It still does,
3 doesn't it?

4 MR. ESTEY: It conditions it, though,
5 seriously now. Secondly, it now says that you shall
6 not issue an interim injunction on less than two-days
7 notice and it goes on to say that the interim
8 injunction shall not run for more than four days. Now,
9 fortunately the Supreme Court in two cases - Century
10 Builders and Dominion Engineering, have found that
11 the words "interim injunction" does not mean that the
12 courts are unable to enjoin a union until trial but
13 what I am saying, sir, is that that change of the
14 statute has not effected a change of the law except
15 to make it practically impossible now to get an
16 ex parte order. It has made it in practice, impossible.

17 THE COMMISSIONER: Couldn't that be
18 construed to mean that your ex parte order lasted only
19 four days?

20 MR. ESTEY: Yes, sir, but it was
21 construed to mean that the court could extend an
22 interlocutory order to trial but what I am saying is
23 the plain wording of the amendment ---

24 THE COMMISSIONER: Doesn't it allow that?

25 MR. ESTEY: I would think a trade union
26 leader, and I have heard this spoken about vehemently
27 many times, that the plain English of the amendment
28 really prohibits interim orders. It means you have
29 to have a trial before you can issue an injunction.
30 In our experience this is what has given rise to a

1 great deal of the dispute in the giving of labour
2 injunctions.

3 THE COMMISSIONER: Well, I think a lot
4 of those disputes centre primarily around the fact that
5 they could get an ex parte injunction. They all
6 became familiar with that expression, ex parte this
7 and ex parte that and that they weren't called upon
8 or notified and the first thing they knew some document
9 was read out by the sheriff. That was the real complaint
10 and they said "Here, it is supported by affidavit and
11 affidavits may be given on information and belief and
12 there is no secured basis for the action of even a
13 temporary, two or three day injunction". It has been
14 suggested that in every application for temporary
15 injunction, ex parte or not, you should have not
16 affidavit evidence but oral evidence - take two or three
17 or four persons who know what they are talking about,
18 bring them before the judge and whatever notice you
19 can give, give. It may be an hour's notice, it may
20 be notice which would be authorized, say, by a provision
21 in the Act that you could notify a certain officer.
22 It might be you could notify certain counsel but
23 certainly a certain agency of the union and in that
24 way you would not have the objection at least to
25 affidavits that sometimes are unsatisfactory.

26 MR. ESTEY: I think that objection is
27 well founded but let me say this, sir, that in the last
28 3 years I know of no ex parte injunction which was
29 ever set aside because the court was misled factually.

30 THE COMMISSIONER: That is quite sound

1 I think and we have had no evidence of it - well, one
2 case.

3 MR. ESTEY: I went through my files
4 in preparation for this hearing and one can only
5 speak of it from his own experience and I must have
6 50 ex parte injunctions in the files which have
7 matured into interim injunctions which have never been
8 set aside. And I would like to illustrate that. Let
9 us take one case. A few years ago there was a crisis
10 between the unions as to how ships would be unloaded
11 in this harbour and you, sir, had occasion to write
12 a judgement back in 1955, I believe, on the stevedores'
13 case in this same general dispute. Several years later
14 the Teamsters and the stevedores fell out as to who
15 would handle the cargo at various stages from the ship
16 to the city street and the Teamsters picketed the
17 harbour area although there was no employer of Teamster
18 labour in the harbour area. This shut the plant down
19 and the harbour in Toronto, of course, operates some-
20 thing less than 150 days of the year so that one day
21 represents a serious loss and, of course, there were
22 perishable goods and everything else. So we proceeded
23 to get an injunction against that Teamster picket line
24 which we had to get ex parte because it had to be
25 secured quickly. The usual affidavits were filed
26 with photographs of the defendants picketing and they
27 were taken before the court and the order granted
28 conditional upon a hearing the following day. They
29 were served and there was the hearing the following
30 day and the trade union, after a very few minutes,

1 completely withdrew from the hearing and consented to
2 the order being made permanent. Now that is the kind
3 of situation where an ex parte order has some
4 application. It has been abused, I have no doubt.
5 I don't know of any but I am sure on occasion something
6 has been stretched and I think it is a concrete
7 suggestion to say that it is not difficult today in
8 the age of the automobile and telephone to have a
9 hearing viva voce instead of on affidavits, but it is
10 really not as important as it sounds because invariably
11 where there is a real issue the trade union or the
12 management or both have availed themselves of their
13 absolute right to cross-examine on the affidavit.

14 THE COMMISSIONER: The only objection
15 to that is the time it takes and the accessibility
16 of a reporter.

17 MR. ESTEY: If either party request a
18 viva voce hearing it would seem to me, with respect -
19 I speak now for myself as this is not an issue of the
20 C.P.I. - that they should have the right. Just as you
21 have a right to trial by jury you should be able to
22 be heard and have it disposed of by live evidence and
23 that would be no hardship but what would be a real
24 hardship would be to absolutely remove from the power
25 of the court the right to issue an ex parte order.

26 THE COMMISSIONER: We have had other
27 instances where it has been necessary to move quickly.

28 MR. POLLOCK: But even in the issuance
29 of your ex parte order in preparing affidavits, getting
30 them sworn and getting all this action it takes more

1 than five minutes.

2 MR. ESTEY: Yes.

3 MR. POLLOCK: So when you embark on
4 this course of action you have some knowledge that
5 you are proceeding with it so that at that time you
6 could communicate that information to somebody else.

7 MR. ESTEY: That is quite right, there
8 is no need to be wholly ex parte. The real need is
9 to have expedition and it could be done by abridgement
10 of notice and, as a matter of fact, Mr. Pollock, that
11 is how we operate now: We move for an order abridging
12 the time and my complaint now is that because of the
13 hubbub in the newspapers and on television, it is
14 very difficult to get a judge in the Supreme Court of
15 Ontario to take the file. He will find all kinds
16 of excuses why he really isn't the appropriate judge
17 and it is difficult now to get any kind of an order
18 and then it is difficult when you get into chambers,
19 to get an order in the nature of an injunction because
20 there has been so much publicity about the evils of
21 injunctions. It is so bad that in the last month
22 in order to get one of those orders we had to draw
23 from the Supreme Court central registry, a file where
24 the affidavits were almost word-for-word and put that
25 file in front of the court with the present affidavits
26 on notice with a very feeble opposition from the trade
27 union and then it took an extra day to get the judgement
28 There was an adjournment for a day to think about it.
29 I am saying the scales are now tilted and tilted against
30 the community interest. I will put the case no higher

1 than that. I am all for tightening up on how you
2 get the injunction but there should be a clear enuncia-
3 tion in the statute that you can have an injunction in
4 certain circumstances and I find section 17 is the key
5 to the difficulty because people read it and say "Look,
6 you shouldn't have that injunction. How do you get it?"

7 MR. POLLOCK: It says an interim
8 injunction to restrain a person from any act in
9 connection with the labour dispute shall be granted only
10 upon at least two-day's notice.

11 MR. ESTEY: Then it goes on to talk
12 about violence.

13 MR. POLLOCK: Then it says you can get
14 it ex parte, an interim injunction under sub-section
15 2 may be granted ex parte.

16 MR. ESTEY: That has a limit of four
17 days on the interim injunction.

18 THE COMMISSIONER: But why doesn't
19 sub-section (2) carry it along adequately for your
20 renewal?

21 MR. POLLOCK: You want to get this
22 interim injunction on two-days notice to last until
23 trial?

24 MR. ESTEY: On such notice as the
25 court prescribes, yes, and that is the way it used
26 to be before they amended section 7.

27 MR. POLLOCK: Well that Dominion
28 Engineering doesn't alter this.

29 MR. ESTEY: It doesn't alter it at all
30 but it goes through 17 pages of reasoning why that isn't

1 so and you get into a tremendous debate with union
2 leaders as to why you are not unlawful.

3 We have talked about everything but
4 organizational picketing.

5 MR. POLLOCK: Before we get to that
6 stage, it is probably easy in your experience to
7 serve notice on some unions where you can identify
8 the unions and you know that certain counsel act for
9 those people and you can give him a call and say you
10 are going to move in this area. How do you provide
11 for notice where perhaps you don't know who the people
12 are?

13 MR. ESTEY: I am glad you raised that
14 question. We have overlooked that. That is the real
15 difficulty today because the picketers are schooled
16 and they won't give their name, even who they are,
17 they won't say what union they are with, they don't
18 wear a sandwich board which says the name of the union.
19 I can only tell you what some people do. One way
20 around that is to lay a charge against the picketer of
21 watching and besetting and the police then get his name
22 and once they have his name then you proceed civilly.
23 Then, of course, you have on your hands, a criminal
24 proceeding and you have to go ahead with it and if you
25 don't convict him, then you are open to malicious
26 prosecution possibilities. So this gets more complicated
27 as society becomes sophisticated and this is a real
28 difficulty now. They hire a mercenary picketer and
29 you can't find out who he is and you have no remedy.

30 THE COMMISSIONER: You get him on the

1 first day, an outsider?

2 MR. ESTEY: He is there the first day
3 and he won't be there the second day, it will be a
4 different one.

5 THE COMMISSIONER: Well, of course that
6 can be met by limiting the picketing to members of the
7 union striking.

8 MR. ESTEY: Yes, sir, that is one
9 reason we made that proposal earlier.

10 MR. POLLOCK: I suppose that really
11 your problem is getting a party against whom to bring
12 an action although in B.C. in Lincoln Electric, they
13 commenced their action against people unknown.

14 MR. ESTEY: They won't do that here.

15 MR. POLLOCK: No, but if you have a
16 union involved and there is provision here for serving
17 notice, if any of the members of the picket line are
18 members of the union, you can serve notice on the
19 union.

20 MR. ESTEY: You are all right.

21 MR. POLLOCK: So if you provided, I
22 suppose, for where a union is involved for service on
23 the union, deeming them to be the interested party,
24 which would satisfy the requirement of having a party
25 and having notice served on somebody and then as the
26 injunction order reads, it reads against everybody
27 and you could also, I suppose, post the notice at
28 the plant and anybody who is walking around there
29 will know that there is a hearing in an hour.

30 MR. ESTEY: There is a case called

1 Indicon versus Rainbird, if you would like a file on
2 that and the injunction was issued on the 23rd of
3 November, 1966.

4 MR. POLLOCK: What is the file number?

5 MR. ESTEY: That I don't have, I can
6 phone you that, and the criminal conviction was
7 registered May the 29th, 1967.

8 MR. POLLOCK: I suppose also there
9 could be some requirement for providing for a
10 registered office or a Toronto agent, or something
11 like that, who could effect service in that manner?

12 MR. ESTEY: The same as a corporation,
13 that is right.

14 THE COMMISSIONER: That is where there
15 is a legal strike. You would always have a little
16 difficulty in the case of an illegal strike?

17 MR. ESTEY: Yes. But if a trade union
18 had the same elements of existence as a corporation,
19 of course, you would always be able to serve them if
20 you knew they were involved or suspected they were
21 involved.

22 THE COMMISSIONER: I don't think there
23 would be very much difficulty in that.

24 MR. ESTEY: It is surprisingly difficult,
25 sir, where you have a trade union council and you know
26 that the secretary or the business agent or the manager
27 is really directing the operations of what is going
28 on. He never appears but you know from what the men
29 tell you that he is issuing instructions. Now, if
30 you wished to commence an action in Ontario, you must

1 name a defendant and it must be a defendant linked to
2 the event. If you name him and you can't find him,
3 then you can't get on with your action.

4 THE COMMISSIONER: I agree, it has
5 to be specified. If you served notice at a certain
6 office or on a certain person elected or chosen or
7 named by the union that is primarily concerned, it would
8 be a valid service.

9 MR. POLLOCK: I suppose you could
10 always send one of your secretaries out from the company
11 and let them picket and name them and get an injunction
12 against them.

13 MR. ESTEY: You might, I never thought
14 of that.

15 MR. POLLOCK: I am surprised you have
16 never thought of that.

17 MR. ESTEY: Anyway, in summary, at the
18 bottom of page 23 we suggest that this Commission
19 consider the usefulness of cataloguing in the Labour
20 Relations Act or the Judicature Act the types of
21 picketing which may be enjoined and the conditions
22 under which the injunction might issue and the procedure
23 by which you get an injunction. Right now it is
24 somewhat less than clear.

25 THE COMMISSIONER: I don't think anyone
26 following these hearings will have any doubt about
27 what is claimed and what is claimed is the right to have
28 mass, which, by the very fact of its existence, will
29 be to a certain extent coercive.

30 MR. POLLOCK: Let me ask you: Apart

1 from organizational picketing and in some cases,
2 secondary picketing, what would you suggest to be the
3 code of conduct that ought to be permitted at these
4 picket lines?

5 MR. ESTEY: Well, lawyers are
6 conservative and they largely live in the past so that
7 I find the existing code of laws adequate. If there
8 is any sign of impropriety, be it violence or an
9 attempt to close a plant down, the relationship of
10 pickets to access points is a sensible solution and
11 right now the current number is four. It used to be
12 two and it has been gradually upped to four per
13 access point. That enables the trade union to adequately
14 communicate but prevents the trade union from closing
15 the plant up.

16 MR. POLLOCK: The legitimate purpose
17 of the trade union is to close a plant up but it is
18 a question of how they do it.

19 MR. ESTEY: That is right.

20 MR. POLLOCK: If you take, for example,
21 physical obstruction, we eliminate. You said earlier
22 that they had the right to stop people to tell them
23 what their position is.

24 THE COMMISSIONER: Where do they get
25 a right to stop me if I want to go into a plant and
26 don't want to stop?

27 MR. ESTEY: I don't think they can
28 put a finger on you, that is battery.

29 THE COMMISSIONER: Well, how are they
30 stopping me?

1 MR. ESTEY: I don't use the word "stop"
2 in the sense of making it possible, but they might
3 walk alongside of you, even though you were on private
4 property, and explain to you why they are on strike
5 and the management should not have the right to allow
6 someone to get into the plant without being subjected
7 to that persuasion.

8 THE COMMISSIONER: But really, is that
9 realistic? Do you think the person going into that
10 plant doesn't understand all that is going to be told
11 to him? Does he have to have it given in some form
12 or oral statement?

13 MR. ESTEY: I am not thinking in terms
14 of the worker.

15 THE COMMISSIONER: But these plants
16 don't have ordinary retail customers.

17 MR. ESTEY: But what happens is the
18 Canadian National Express comes up and he has never
19 been there before --

20 THE COMMISSIONER: But do you think
21 the expressman seeing that sign of strike is not
22 familiar with everything that is involved? Those
23 things are really superfluous.

24 MR. ESTEY: It may well be but this
25 is a strongly felt right of the trade union movement
26 that they have the right to make sure that every driver
27 who comes up there knows that this thing is a lawful
28 strike.

29 THE COMMISSIONER: If the driver is
30 willing to stop and listen, why, of course, they can

1 talk but the idea that he is under any duty or they
2 have any right to stop him, I think is not right.

3 MR. ESTEY: I don't think in fairness
4 to the trade union movement they intend to put it that
5 high. I think the people we deal with and have
6 threshed this out with, I don't think any of them have
7 ever said that they have a right to arrest or commit
8 a battery or in any way impede the progress of a person
9 but they do have the right to be in proximity to that
10 person so the person is beyond any doubt aware that
11 this is a lawful strike and he didn't want him to go
12 in.

13 THE COMMISSIONER: That is so but on
14 the other hand I think we underestimate the intelligence
15 of the people who are going in and out of that plant.

16 MR. ESTEY: Yes, and their present
17 state of education, that is right.

18 MR. POLLOCK: Of course there are
19 many cases in which people are recruited by an employer
20 and transported to the plant by the employer in his
21 car and don't have an opportunity to even discuss this
22 with the people.

23 MR. ESTEY: Yes, that is one of the
24 arguments that we hear and I suppose there is something
25 to it.

26 THE COMMISSIONER: As if the person
27 who is being carried in that car for the purpose of
28 going to work needs any formal instruction.

29 MR. ESTEY: I think one of the silliest
30 instances of this is at the time of the Royal York

1 Hotel strike where the trade union asserted the right
2 to get into the tunnel from the railway station to
3 the hotel because the people passing through the tunnel
4 would not know there was a strike on. Obviously the
5 reason they are in the tunnel is to avoid the picket
6 line. This is the kind of thing you can carry too
7 far. All I want to be known and heard to say, sir,
8 is that while I am preaching the right to an injunction
9 I also don't want to be thought to overstate the case
10 to say that the other side doesn't have the right to,
11 within reason, be present around a plant, that is all.

12 THE COMMISSIONER: That is really not
13 questioned. The only thing about the total feature of
14 it is, I must say that those who frankly say that that
15 is not their object at all, that they want to impress
16 severely by presence, is much more to the point.

17 MR. ESTEY: And our position is
18 diametrically opposed to their assertion of that right
19 and we rely upon the common law away back to the Queen
20 and Lathamally.

21 THE COMMISSIONER: What you have to
22 take into account is the emotions of these people who
23 look upon that plant as their working home and they
24 see other men, strike breakers, going in there and
25 occupying their places, their chairs, their seats, their
26 bench areas and one thing and another, and there is no
27 doubt in the world, as they have said, it is human
28 nature to resent that very deeply and very violently
29 sometimes. That is the reality of that situation of
30 the picket line. It is not done in the coolness of 20

1 below zero at all: It is done in a situation where
2 a great deal of heat is quickly generated. I am not
3 justifying that at all. I am trying to describe what
4 really takes place.

5 MR. ESTEY: It is a reality. That, sir,
6 is why we have made proposals to get at this thing
7 before these confrontations occur and this is the vital
8 area of labour relations.

9 THE COMMISSIONER: I think that is
10 the problem and the question is now how can we prevent
11 the generation of that?

12 MR. ESTEY: I only have two topics I
13 would like to direct the Commission's attention to.
14 One of them is the certification procedure and then
15 finally, some restrictive trade practices which we
16 think are not in the interest of the community.

17 So far as certification is concerned,
18 I can be very brief. We have 98 per cent of our
19 work force unionized now, so certification is not as
20 important to us as it is to some industries. But we
21 do have a lot of specialized craft unions who sometimes
22 wish to pull out of the larger unit and form their
23 own and we go through this same kind of procedure.
24 Also, we hope we are not considered as making gratuitous
25 comments but we would like to comment on the certifica-
26 tion procedure because the way it is administered by
27 the board today is, in our respectful view, not
28 helpful to the community at large or to labour relations
29 in particular because of this: The first thing that
30 happens in the certification procedure is the trade

1 union makes the application and the employer then
2 receives a notice which he is supposed to post in the
3 plant. That is a green form which this commission
4 has no doubt seen and right on the face of it it invites
5 people to make submissions and it says, "If you make
6 a submission within a certain time (which they call
7 the terminal date) then you are entitled to participate
8 in the proceedings" and it uses the word "participate".
9 As soon as that green sheet goes up in the plant
10 invariably what happens is there is an element in the
11 plant, sometimes a majority who go to management from
12 the foreman up and say to management, "What is this
13 about? Explain this to us". Now section 48 says
14 that the employer has the right of freedom of speech
15 provided he doesn't say anything and maybe that is
16 necessary. The Americans don't have that. The
17 National Labour Relations Act says "This Act does in
18 no way limit the right of freedom of expression".
19 Management in Ontario is in a very strange position
20 when that green sheet goes up on the wall. That is
21 the first problem, that is the first friction point.
22 The second friction point is more serious.

23 MR. POLLOCK: At that point, what
24 does the employer do?

25 MR. ESTEY: If the employer is well
26 advised he says nothing.

27 MR. POLLOCK: He says "Phone the
28 Labour Relations Board and ask them".

29 MR. ESTEY: Sending him to the Labour
30 Relations Board is not very helpful because the Labour

1 Board doesn't say anything. They say "Well, go talk
2 to the union if you want, or go and get a lawyer".
3 Usually they say nothing. The next thing that
4 happens, though is more serious because the foreman
5 or somebody says to the man, "Well, read that paragraph"
6 and then he stands there while he reads it. Sometimes
7 he will translate it for him because there are a lot
8 of Italians, Portuguese, Maltese workers in Ontario
9 and they have someone read it to them. And it says,
10 "Send in a petition" and the man writes a letter, he
11 doesn't want the union or he wants another union or
12 he wants to know what it is all about so he writes
13 a letter. That letter gives him no status whatsoever
14 although the green sheet says it does. But the more
15 likely thing is there would be one leader in the group
16 and he will circulate a petition. The petition will
17 say something across the top, either "We want the
18 bookbinders' Local 28" or "We don't want anybody" and
19 this is circulated through the plant and signatures
20 are signed on it and it is forwarded to the board. It
21 is pathetic what happens really in some cases because
22 people will sometimes mail that petition to the union.
23 Frequently this happens. It is incredible, but they
24 do. They see the name up at the top and there is an
25 address in the middle, it is the address of the union
26 and they mail the petition to the union. The minute
27 they do that their rights are gone because the union
28 doesn't file it. The filing date is then gone. I had
29 one of those last week. Even if he gets it properly
30 filed we come then to the hearing. This is all reported

1 in Danforth Press on the Labour Relations Board, this
2 is what happened last fall. They hold a hearing and
3 the trade union files a great bundle of documents.
4 They consist of the applications and the receipts
5 of individuals to show they have joined the union
6 and if more than a half, or 50 per cent, were there,
7 then the Labour Board chairman or presiding officer
8 says, "I have compared these signatures and I find
9 them to be proper".

10 MR. POLLOCK: More than 45 per cent.

11 MR. ESTEY: Sometimes he will say
12 what it actually is but, in any event, more than 40.
13 In any case at the back of the room sits the petitioner.
14 If he has been advised at all, he has been told to get
15 down there to the hearing. Now, they get up in the
16 hearing, Danforth Press was an outrageous case and
17 that is unusual but let me give you the outrageous
18 one first and then I will back up a little closer to
19 the normal. In Danforth Press the Board reached a
20 decision that there was sufficient application bona
21 fide and receipts filed to warrant certification and
22 they so stated and they left the room. Then, somebody
23 found the petitioners who had filed a petition on which,
24 I think more than half of the bargaining unit signed
25 that they did not want the unit, they called the Labour
26 Board back in and so the Labour Board chairman, somewhat
27 miffed at this inconvenience, called the person forward
28 to the bar of the Board Room and said "Now, what is it
29 you have to say?". By this time, of course, the
30 great Erskine couldn't have persuaded that Board to

1 change its mind. But in any event they said "We have
2 got to give you a hearing, speak up". In the succeeding
3 few minutes it was quickly pointed out to the petitioner
4 that she can't really testify to those signatures
5 because she didn't witness them all. It is of no
6 comfort to the petitioner to find out that the union
7 didn't have to witness theirs. All they had to do
8 was provide them and the Board then compared them to
9 the payroll information which the company had filed
10 weeks before.

11 MR. POLLOCK: They file a certificate,
12 though, of that, that somebody has witnessed these
13 things?

14 MR. ESTEY: But they don't have to have
15 a witness on there at all and the Board doesn't take
16 time to have one, but the petitioner is asked if she
17 witnessed them all. "No, I didn't." - "Well, you are
18 out." That was taken by certiorari to the Supreme
19 Court and the Supreme Court found that the way the
20 Act is set up now the Board doesn't have to do more
21 than that. All I am laying before you, Mr. Commissioner,
22 is this: There are two standards. The first standard
23 is that applicable to the trade union that wishes to
24 represent the worker and that trade union does not have
25 to testify to explain its procedure to say that it did
26 not use coercion, that it did not use false information,
27 it doesn't even have to refrain from defamation of
28 management or of other trade unions; all it has to do
29 is produce these receipts plus the application, plus
30 the certificate. Now, the petitioner has to prove every

1 step. If he does get in there he is subjected to a
2 grilling by the chairman as to whether there are any
3 maldives, any tampering by management, any tampering
4 by another trade union and if there is a technical flaw
5 that all those signatures aren't witnessed ^{that} interven-
6 tion is thrown out and that is the end of that. They
7 are not called forward to the front of the room, they
8 are not given the right to ask the trade union officer
9 anything, they don't appear in the proceeding at least
10 until the last gasp and in Danforth Press, after the
11 last gasp. Now those are the two stoppages.

12 THE COMMISSIONER: You portray a very
13 stupid working procedure where - what is it, 45 or 50
14 per cent signed the original application and yet you
15 spoke of a majority who were on this petition.

16 MR. ESTEY: What happened, sir, - I
17 want to come back to the norm. Let me deal with the
18 norm. What happens is this....

19 THE COMMISSIONER: By the way, would
20 you tell me exactly how you use the word "norm"? Do
21 you mean the normal or as a standard or what?

22 MR. ESTEY: The normal situation is
23 not quite so bad as Danforth Press.

24 THE COMMISSIONER: I don't mean to
25 question your use of it, but I find difficulty in
26 understanding exactly what it means.

27 MR. ESTEY: Well, in the average case,
28 let us use this term, in the average case the workman
29 in the plant will sign two completely opposite documents.
30 It is incredible, but he does.

1 THE COMMISSIONER: Are you speaking
2 of your own bodies of employees?

3 MR. ESTEY: Yes.

4 THE COMMISSIONER: I assume they are
5 rather high in the scale of skill and understanding.

6 MR. ESTEY: They are and the more
7 intelligent they are the more likely they are to sign
8 twice, because they want to be with the winner and they
9 don't know who it is going to be. That is right.

10 THE COMMISSIONER: You mean they sign
11 the card asking for certification and at the same
12 time they sign the certificate which nullifies certi-
13 fication?

14 MR. ESTEY: Yes, so the Labour Board
15 has a delicate operation to perform. They must
16 discern which is the true expression of intent. Now,
17 sometimes, sir, there is an intervening development.
18 For example, in a larger plant these men will be
19 solicited at home at night by sometimes people who
20 are professional solicitors who have no connection
21 with that industry and things will be said which are
22 misunderstood and the man will sign. Sometimes
23 probably more than persuasion, coercion. And then he
24 goes to the plant and he talks to a man he has worked
25 with for 20 years and that man says "This is why we
26 don't want the union" and so he signs the petition.
27 Sometimes it is a genuine change of mind, sometimes,
28 but I regret to say, in my experience, the majority
29 of cases, it is simply that the man does not wish to
30 oppose anybody; he just wants to join the winner and

1 a foreign worker, a person who can't speak good English,
2 is more likely to sign twice than^a/person who speaks
3 good English because he won't reach that misunderstand-
4 ing as quickly as the other one.

5 THE COMMISSIONER: Then doesn't that
6 lead, it seems to me, to this: Essentially the employer
7 is opposed to unionization as a fact?

8 MR. ESTEY: I doubt that that is so
9 today. I doubt that because there are now many
10 advantages to having a union.

11 THE COMMISSIONER: It seems to me there
12 are advantages and why should the employer take a
13 question up of this sort?

14 MR. ESTEY: Because of this: I said
15 earlier, sir, the first thing that happens when the
16 green sheet goes up on that notice board is the worker
17 who has been there many years comes to the employer and
18 he complains.

19 THE COMMISSIONER: And the employer
20 says, "Well, that is up to you to find your own
21 meaning".

22 MR. ESTEY: If the man complains,
23 though, the employer won't help him and this is a
24 serious complaint.

25 THE COMMISSIONER: Complains to whom?

26 MR. ESTEY: He complains to the employer
27 and the employer won't do anything about this. The man
28 does not want that union, the employer says "That is
29 your problem, you decide". The man complains "I have
30 been here all this time, you have given me advice before,

1 why can't you talk to me now?", and the employer says
2 "We can't call a meeting". There is that reaction.
3 But more seriously this is what happens: You take
4 a large manufacturing concern which has a drafting
5 room that draws out the piece-workers' blueprints so
6 the piece-worker knows how to set up his punch press.
7 That man thinks he is a professional. More power to
8 him. He says "I am a better man than the worker
9 who is just turning a wheel. I am a designer in
10 part, I am a half designer and I don't want to be in
11 a trade union, I am not a member of the union local".
12 He goes to his foreman and he says "I don't want in a
13 union and you keep me out". Maybe there are 150 of
14 these draftsmen but they are in the union because the
15 Labour Board has published a notice which includes them.
16 Now how can they get out? They can only get out if
17 they form a band of their own. Generally, they go
18 and get a letter. They circulate a petition. They
19 resent the management's refusal to participate, they
20 resent management telling them they can't circulate
21 that petition around the plant, they can't use company
22 paper, they can't use the company typewriter. They
23 resent this, this is a big factor. They go down to
24 the hearing, the company representative gets up and
25 says, "I can't participate in this hearing, I can't
26 describe the position of the parties, call on the
27 workmen". The workman gets up, he feels strange, he
28 is not a lawyer, he has not got a lawyer. If he has
29 he gets a much better hearing, but usually he has not.
30 He tries to explain that this fellow is a professional,

1 The company can't do that. The Board puts that man
2 on the witness stand and cross-examines him up and down
3 and all over the place trying to find that he is
4 connected with management. That is a certification
5 process. That is what we think probably now should
6 be adjusted and there is only one thing wrong with it
7 and that is that the Board does not ascertain the true
8 rights of the parties by votes frequently enough. They
9 use this screening system to say "This is not the true
10 expression of intent".

11 THE COMMISSIONER: We have not had any
12 persons who have come to this Commission complaining
13 about the manner in which they have been dragooned
14 into the certification.

15 MR. ESTEY: The reason you will not
16 hear that is the reason that the workers find it so
17 difficult to organize themselves at the time of
18 certification. They are not going to by the nature
19 of things ---

20 THE COMMISSIONER: You may be quite
21 right and I am not challenging the judgement which you
22 express but I can't but really feel this, that at the
23 bottom of it all is a resistance to unionization and
24 the question is now, is unionization not only legitimate
25 but is it a desirable thing in modern industry. I
26 have not any doubt that there are some jurisdictions where
27 when an employer is approached for some sort of an
28 agreement, his first statement will be "Are you
29 organized?". First question, "No" - "Well, go and get
30 organized", because in Australia the organization is

1 something of value, it is not of value here?

2 MR. ESTEY: I think it is. I think
3 history indicates that democracy and the trade union move-
4 ment have always gone hand in hand, where you don't
5 have one you don't have the other and vice versa.
6 Unquestionably, sir, 20 years ago one of the big
7 factors behind the Board's operation was to smell out
8 management interference.

9 THE COMMISSIONER: But why?

10 MR. ESTEY: Because 20 years ago,
11 management generally opposed trade unions.

12 THE COMMISSIONER: Exactly.

13 MR. ESTEY: That is not so today.

14 THE COMMISSIONER: It is not really
15 detrimental to say that management opposed it. It
16 was inevitable from the beginnings of employment with
17 management, because it is in charge of its property
18 and wants to do what it thinks is in its own interest.
19 There is no criticism involved in stating that fact
20 at all.

21 MR. ESTEY: I don't take your question
22 to be critical at all. I am simply saying that this
23 thing has its explanation in history, that in Ontario
24 the Board, for a long time, had to devote an enormous
25 amount of its time and energy to balancing the scales
26 because management was interfering with the formation
27 of the union but it has gone away beyond that now
28 and the management, by and large, recognizes the
29 benefits of a trade union and prefers some unions over
30 others and this also gets us into trouble because

1 management can't tell a man to join a union. They
2 can't lawfully tell a man to join a union.

3 THE COMMISSIONER: No, that is so.

4 MR. ESTEY: And they can't lawfully
5 they
6 tell a man that / would prefer him to join union A
7 instead of union B. So all I am saying is, the tools
8 which were designed by the Labour Board for the 1940's
9 are still being used in the 1960's and times have
10 changed.

11 MR. POLLOCK: Well, because there are
12 still 1940 employers around. They may not be the
13 norm but they are there.

14 MR. ESTEY: Some are. There was a
15 labour case last fall which you may have run across
16 where management typed up the petition and circulated
17 the petition and paid the men to circulate the
18 petition. That sort of thing has got to be sorted
19 out and penalized and they did.

20 THE COMMISSIONER: Where this organiza-
21 tion is inevitable now, the likelihood is that it is
22 going to increase, why not acknowledge it and put it
23 under such it might be restrictions, as might enable
24 it to function in a society to which it has become
25 unavoidable? You can't destroy that today and if
26 nothing else, I think all you have to do is look at
27 the amount of money you are spending for education.
28 What are you trying to educate the generality of human
29 beings into? Subordination? Or assertion of rights?
30 They assert rights which are not right, I agree, but
I mean in the sense of reaching that adjustment which

1 ultimately will be most acceptable to all concerned.
2 That, it seems to me, is the object of this whole
3 travail of employment and worker.

4 MR. ESTEY: It is that very process,
5 I say with respect, which has probably made the
6 presence of a union a necessity in many, many plants
7 because if you have a work force of 8000 or 9000 people
8 and you don't have a union, I doubt very much in
9 today's freedom and leisure time if you would have
10 many people in the plant doing what you wanted them
11 to do if you didn't have a union.

12 THE COMMISSIONER: You must have order.

13 MR. ESTEY: That is right.

14 THE COMMISSIONER: And order will
15 follow only from respect of leadership and that is
16 the object I would say on both sides - leadership.

17 MR. POLLOCK: You are speaking now, at
18 least from a position of 98 per cent union organization
19 and in your group I couldn't conceive, and I don't
20 think you can, of having a non-union shop proliferate
21 in Ontario in the printing industry.

22 MR. ESTEY: No.

23 MR. POLLOCK: But in these other areas
24 there is nobody going to quarrel with you that the
25 procedural aspects of the Labour Relations Board are
26 probably as complex as the old Chancery procedure and
27 it is easier to get an adjournment in the Supreme
28 Court of Canada than it is in the Labour Relations
29 Board. But all these things are designed to weed
30 out very difficult judgements where you have people

1 who are opposed to trade unions and who do all these
2 things. Now, from looking at you and looking at the
3 gentleman sitting next to you, I couldn't tell what
4 is going through your mind. All I can do is judge
5 from some outside things, so they have put these things
6 to extreme scrutiny and testing in all circumstances.
7 What do you do short of modify them? You ask other
8 people and they all say "Well, let us have a vote
9 every time, let us have a certification vote". But
10 what are they doing during the certification vote?
11 They are campaigning and they are doing it under wraps,
12 so to speak, "Do as much as you can, delay it". Are
13 they content with the majority of people voting? No,
14 they want the weighted vote. So, although I believe
15 your submission today, some of the other people make
16 the submission and it weakens your petition because
17 they don't make it in good faith.

18 MR. ESTEY: Well, you can overstate it.
19 I would like to leave it with only this reference that
20 I would be glad to give you a labour board file number
21 which culminated, I think, in January, where 51 out of
22 53 people signed a petition to decertify a trade union
23 and the reason for it is in the file and it makes
24 common sense, and the Labour Board wouldn't decertify
25 it. So they had to go out and come in again because
26 they didn't witness the signatures properly and they
27 hadn't gone through this rigamarole so they waited
28 and they came back in again and they had again 50 or
29 51 out of 53 and this time the Board directed a vote -
30 the vote was 98 per cent. This is a waste of the

1 country's money to act in this way. All I say is the
2 Labour Board is back in the 40's and the problem is
3 in the 60's. I put my case no higher than that and
4 it is probably the least important of the submissions
5 we are making today because we are 98 per cent trade
6 union.

7 I would like to speak only briefly
8 of a restrictive trade practice problem which is more
9 critical to us than probably in any other segment of
10 industry in Canada. We have, for example, amongst our
11 employees, photo engravers. Photo engraving has been
12 a dying art for some 25 years because it has been
13 automated by the introduction of photo-electric processes
14 and by chemistry.

15 THE COMMISSIONER: Would you mind just
16 shortly describing those functions to me?

17 MR. ESTEY: In the old days, sir, to
18 make an engraving, away back, you had to have a man
19 akin to an artist, half artist and half sculptor, and
20 he would actually carve out the printing face and the
21 face would then be dipped on the pad and then be put
22 on the paper and there was the picture.

23 THE COMMISSIONER: Would he do it on
24 wood?

25 MR. ESTEY: Do it on wood, rubber, stone,
26 or metal. Well, that has all gone but for many years
27 there was a plateau of science ---

28 MR. POLLOCK: It is not all gone,
29 British American bank notes use that procedure.

30 MR. ESTEY: Well, in our trade it is

1 gone, I hope forever. For many years, sir, during the
2 1920's, 30's, 40's and early 50's, this kind of trade
3 was semi-skilled in that the man had to expose his
4 ink plate to the rays of light and then the chemical
5 action on the zink plate would etch it out so that it
6 would imitate in reverse the picture in the film and
7 he had to have a certain amount of skill to know how
8 long to expose it and how to stop the action and how
9 to rout out the edges to frame it up and saw it and
10 mount it on a piece of block so you could put it in a
11 printing press. Now, today, we see that fading rapidly
12 from the scene because of two things - one, lithography
13 is crowding out letter-press operating and lithography
14 makes its plates almost by throwing a switch, by
15 exposing a very thin sheet of metal to the rays that
16 are coming through a film and it etches it out, times
17 it automatically, arrests the development automatically,
18 you strap that on a cylinder and away you go and you
19 have got a plate. You don't require any skill, you
20 and I could do it. And in one hearing I did make one.
21 The photo engraver, on the other hand, has to have a
22 little bit of skill but not very much because they
23 put this picture in a box, the picture they want
24 reproduced, and after a few minutes you pull the plate
25 out the other end. But in the meantime, the trade
26 union has developed a history of restrictive membership.
27 They feared unemployment so they would not allow
28 apprentices and, of course, it went the other way. The
29 source dried up and the agreements elaborately spell
30 out the ratio of journeymen to apprentices. The result

1 of that is that to get a journeyman today in some of
2 these printing fields you have to pay premiums. That
3 may be a new expression in this Commission. It is a
4 payment over and above the collective agreement level.
5 It is 10 to 15 per cent of the base wage. You pay
6 it to lure the man away from employer B. We lure
7 each other's employees away. This is ridiculous but
8 this is competition. All of this springs from the
9 practice of cutting down on the number of apprentices
10 and our proposal is a very simple one and that is that
11 the statute should give us the right of appeal to
12 somebody, Labour Board or some tribunal, if we think
13 the trade union is overly restrictive - no more than
14 that. It is truer of the printing industry than it
15 is of others because we have some skills which have
16 to be acquired over a time. You can't learn them in
17 the Ryerson Institute of Technology.

18 We have other references in our brief,
19 which I will leave with the Commission, dealing with
20 the suggestion that restrictive provisions in union
21 constitutions should be outlawed just as we outlaw
22 restrictions in union constitutions which seek to keep
23 people out because of religion, colour, or something
24 else. We think it is equally wrong to limit a trade
25 union's membership for the purpose of throttling down
26 on the supply of trained personnel.

27 MR. POLLOCK: Why?

28 MR. ESTEY: Because it is just a method
29 of elevating wages artificially beyond their productive
30 output.

1 MR. POLLOCK: What about the employer
2 who manufactures widgets and he only wants to produce
3 so many because if he produces too many it will flood
4 the market and the price will go down, or the diamond
5 market, or any of these things?

6 MR. ESTEY: There are laws prohibiting
7 that. If there are two of them agreeing on that it
8 is wrong.

9 MR. POLLOCK: If you have one of them.

10 MR. ESTEY: One might also be condemned
11 under section 32 of the Combines or the Restrictive
12 Trade Practices Act.

13 MR. POLLOCK: By reducing his production?

14 MR. ESTEY: If he is a monopoly, then
15 it is an offence. No one has been convicted. The
16 argument loses some steam in the fact that the only
17 person charged got off but maybe that was somebody
18 else's fault. It is wrong and it is condemned in other
19 branches of trade and I think it would be wrong if the
20 law society, for example, said "Let us have only one
21 law school, let us cut it down to 40 lawyers a year".

22 MR. POLLOCK: They tried to do that
23 once.

24 MR. ESTEY: Yes, it did and it was just
25 as wrong as what I am saying is wrong and the result
26 has been the five law suits and the law profession
27 for
28 has never been so good when we think/the same a number
29 have been so bad and we say that is what will happen
30 here.

I know the Commission has heard all

1 too much about most of the remaining portion of our
2 brief and unless the Commission has some questions to
3 put to us, we thank you for the opportunity of appearing
4 and leaving the few thoughts with you.

5 MR. POLLOCK: Thank you for your
6 appearance. It is certainly an enlightening one.

7 THE COMMISSIONER: I would like to
8 express our appreciation, gentlemen, of the fullness
9 of this discussion because that is the only way I think
10 we can arrive at any ideas on change. It may be that
11 there are none but it will be enlightening to find
12 that out.

13 MR. POLLOCK: This Commission is
14 adjourned.

15
16 ---Adjournment.
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